

United States  
Circuit Court of Appeals

For the Ninth Circuit.

UNITED STATES OF AMERICA,  
Appellant,  
vs.

H. F. METCALF, as Trustee in Bankruptcy of the  
Estate of F. P. Newport Corporation, Ltd., a  
corporation, Bankrupt,  
Appellee.

Transcript of Record

Upon Appeal from the District Court of the  
United States for the Southern District  
of California, Central Division.

FILED

DEC 2 1942

PAUL F. O'BRIEN,

CLERK



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Circuit Court of Appeals  
For the Ninth Circuit.

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vs.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

WM. FLEET PALMER, Esq.,  
United States Attorney,

E. H. MITCHELL, Esq.,  
Asst. U. S. Attorney,

EUGENE HARPOLE, Esq.,  
Special Attorney, Bureau of Internal  
Revenue,  
U. S. Postoffice & Courthouse Bldg.,  
Los Angeles, California.

For Appellee.

Messrs. BAILIE, TURNER & LAKE,  
ALLEN T. LYNCH, Esq.,  
811 Citizens National Bank Bldg.,  
Los Angeles, California. [1\*]

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\*Page numbering appearing at foot of page of original certified Transcript of Record.

In the District Court of the United States  
Southern District of California

Central Division

In Bankruptcy No. 25,308-M

In the Matter of

F. P. NEWPORT CORPORATION, LTD.,  
Alleged Bankrupt.

CREDITORS' INVOLUNTARY PETITION IN  
BANKRUPTCY

To the Honorable, the Judges of the Central Division of the United States District Court, for the Southern District of California:

The petition of C. G. Kinsey, W. B. Halligan, and Hiram E. Casey, as Trustee of the Estate of Charles R. Stuart, a bankrupt, respectfully shows and alleges:

I.

That at and during all of the times herein mentioned the F. P. Newport Corporation, Ltd. was and is a corporation, and has had its principal place of business at 106 West 6th Street in the City of Los Angeles, County of Los Angeles, State of California for the greater portion of the six months next preceding the filing of this petition, and owes debts in the amount of One Thousand (\$1,000.00) Dollars and over, and the same is a commercial corporation doing a realty business and is not a municipal, railroad, insurance or banking corporation or a building and loan association.

II.

That your petitioners are creditors of the said F. P. Newport Corporation, Ltd. having provable claims amounting in the aggregate in excess of securities held by them to the sum of Five Hundred (\$500.00) Dollars and more. That the nature and amounts of your petitioners' claims are as follows, to-wit:

(a) The claim of your petitioner C. G. Kinsey is a balance due for work and labor performed and services rendered to the [2] said Alleged Bankrupt at its special instance and request upon an open book account within four years last past in the sum of \$2,500.15 and accrued interest, which said sum the said Alleged Bankrupt promised and agreed to pay therefor, and that neither the whole nor any part of the said sum has been paid, and the whole thereof, is now due, owing and unpaid from the said Alleged Bankrupt to the said C. G. Kinsey;

(b) The claim of your petitioner W. B. Halligan is a balance due for work and labor performed and services rendered to the said Alleged Bankrupt at its special instance and request upon an open book account within four years last past in the sum of \$613.32 and accrued interest, which said sum the said Alleged Bankrupt promised and agreed to pay therefor, and that neither the whole nor any part of the said sum has been paid, and the whole thereof is now due, owing and unpaid from the said Alleged Bankrupt to the said W. B. Halligan;



(c) The claim of your petitioner Hiram E. Casey as Trustee in Bankruptcy for Charles R. Stuart, bankrupt, is based upon a judgment procured by the said Hiram E. Casey as trustee of the said Charles R. Stuart, Bankrupt, in the sum of \$766.97, which said sum was procured in a Municipal Court in the City of Los Angeles, County of Los Angeles, State of California, on the 12th day of June, 1934, in an action therein numbered 346125 wherein your said petitioner was the plaintiff and the said Alleged Bankrupt herein was the defendant; that no part of the said sum has been paid, and the whole thereof remains due, owing and unpaid.

### III.

That the said Alleged Bankrupt, F. P. Newport Corporation, Ltd. is insolvent, and that within four months next preceding the date of this petition and while insolvent the said F. P. Newport Corporation, Ltd. committed an act of bankruptcy in this, that it did heretofore on or about the 15th day of March, 1935, [3] transfer a portion of its property, to-wit, money in the sum of \$433.20 to a certain general unsecured creditor, to-wit, J. B. Gribble, with intent to prefer the said creditor over its other creditors in the same class, the payment of which said sum, as aforesaid, did then and there amount to a preference in favor of the said creditor.

Wherefore, your petitioner prays that service of this petition with the subpoena be made upon the said F. P. Newport Corporation, Ltd. as provided



by the Acts of Congress relating to Bankruptcy, and that it may be adjudged by the Court to be a Bankrupt within the purview of the said Act.

C. G. KINSEY

W. B. HALLIGAN

HIRAM E. CASEY

Hiram E. Casey as Trustee of  
the Estate of Charles R.  
Stuart, Bankrupt.

HIRAM E. CASEY,

Attorney for Petitioning Creditors. [4]

State of California

United States of America

Southern District of California

Central Division

County of Los Angeles—ss:

C. G. Kinsey, W. B. Halligan and Hiram E. Casey, as Trustee of the Estate of Charles R. Stuart, a bankrupt, being the three petitioning creditors herein, each being duly sworn, does hereby make solemn oath that the statements contained in the foregoing petition subscribed by them are true.

C. G. KINSEY

W. B. HALLIGAN

HIRAM E. CASEY

Hiram E. Casey, as Trustee  
of the Estate of Charles R.  
Stuart, Bankrupt.

Subscribed and sworn to before me this 18th day of March, 1935.

(Seal)

GLADYS M. NICKELL

Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: Filed Mar. 19, 1935, 10:50 AM. R. S. Zimmerman, Clerk. By Theodore Hocke, Deputy Clerk. [5]

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[Title of District Court and Cause.]

#### ADJUDICATION AND ORDER OF REFERENCE

At Los Angeles, in said District, on the 12th day of January, A. D., 1937, before the Honorable Wm. P. James, Judge of said Court in bankruptcy, the petition of C. G. Kinsey, W. B. Halligan and Hiram E. Casey, as Trustee of the Estate of Charles R. Stuart, a bankrupt, that F. P. Newport Corporation, Ltd., a corporation, be adjudged a bankrupt, within the true intent and meaning of the Acts of Congress relating to bankruptcy, having been heard and duly considered, the said F. P. Newport Corporation, Ltd., a corporation, is hereby declared and adjudged a bankrupt accordingly.

It Is Therefore Ordered, That said matter be referred to E. R. Utley, Esq., one of the Referees in Bankruptcy of this Court, to take such further proceedings therein as are required by said Acts; and that the said F. P. Newport Corporation, Ltd. shall

attend before said Referee on the 19th day of January, at Los Angeles and thenceforth shall submit to such orders as may be made by said Referee or by this Court relating to said involuntary bankruptcy.

Witness, the Honorable Wm. P. James, Judge of the said Court, and the seal thereof, at Los Angeles, in said District, on the 12th day of January, A. D. 1937.

(Seal of the

Court) R. S. ZIMMERMAN

Clerk

By M. R. WINCHELL,

Deputy Clerk.

[Endorsed]: Filed Jan. 12, 1937. [6]

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[Title of District Court and Cause.]

ORDER ALLOWING REVIEW FROM REFEREE'S ORDER APPOINTING TRUSTEE HEREIN, AND, ORDER APPOINTING H. F. METCALF, TRUSTEE.

The Petition for Review by Hiram E. Casey, Esq., Trustee in Bankruptcy of the Estate of Charles R. Stuart, Bankrupt, of the Order made and entered herein on February 25, 1937, by Hon. Ernest R. Utley, Referee in Bankruptcy, appointing Hubert F. Laugharn as Trustee in Bankruptcy herein, came on regularly for hearing before the Court on the 15th day of March, 1937, at 10:00 o'clock A. M., the said Hiram E. Casey, Esq., appearing in per-

son, and Bank of America National Trust & Savings Association appearing by its attorney, Edmund Nelson, Esq., and Robert Powell, Esq., appearing on behalf of certain creditors herein, and the said Petition having been presented upon the verified Petition of said Hiram E. Casey, Esq., and the Certificate of the Referee herein, together with an Amendment thereto, together with the Reporter's Transcript of the proceedings had before the Referee herein on February 23, 1937, and on February 25, 1937, and the matter having been argued and presented by the respective counsel herein and submitted to the Court for its decision, and the Court having considered said Petition for Review and Certificate of said Referee and Amendment thereto and the Transcript of the proceedings had before said Referee as filed herein by said Referee, and being fully advised in the premises; and

It Appearing to the Court that the meeting of creditors for the election of a Trustee herein was duly and regularly called for and held on the 23rd day of February, 1937, at 10:00 o'clock A. M. [7] before Hon. Ernest R. Utley, one of the Referee's herein, and that at the said time and place H. F. Metcalf was the only nominee for the office of Trustee and that the said H. F. Metcalf received the majority in number and amount of votes then and there voting:

It Further Appearing that there was not a good or sufficient cause shown for continuing the meeting for the election of Trustee from February 23,

1937, to February 25, 1937; and that there was an abuse of discretion by the said Referee in ordering the said election of the said Trustee to be continued from the 23rd day of February, 1937, at 10:00 o'clock A. M. to the 25th day of February, 1937, at 10:00 o'clock A. M. and that said H. F. Metcalf was duly and regularly elected Trustee herein on the said 23rd day of February, 1937; now therefore, It Is Hereby Ordered:

1. That the Order heretofore on February 25, 1937, made and entered herein by Ernest R. Utley, Referee herein, appointing Hubert F. Laugharn Trustee in Bankruptcy of the Estate of F. P. Newport Corporation, Ltd., a corporation, bankrupt, be and it is hereby disaffirmed and set aside.

2. That H. F. Metcalf be and he is hereby declared to be the duly elected Trustee in Bankruptcy of the Estate of F. P. Newport Corporation, Ltd., a corporation, bankrupt.

3. That the bond of H. F. Metcalf as Trustee in Bankruptcy of the Estate of F. P. Newport Corporation, Ltd., a corporation, bankrupt, be and it is hereby fixed at the sum of \$10,000.00, said bond to be approved by the Referee in Bankruptcy before said Trustee takes office herein.

Dated this 18th day of March, 1937.

PAUL J. McCORMICK,

United States District Judge.

[8]

[Endorsed]: Filed Mar. 18, 1937. R. S. Zimmerman, Clerk. [9]



“Original”

In the District Court of the United States for the  
Southern District of California.

No. 25,308-M

In Bankruptcy

In the matter of F. P. Newport Corporation,  
Limited, Los Angeles, California.

# CLAIM OF UNITED STATES FOR TAXES

State of California,

County of Los Angeles—ss.

Nat Rogan, Collector of Internal Revenue for  
the Sixth Collection District of California, a duly  
authorized agent for the United States in this  
behalf, being duly sworn, deposes and says:

1. That the above-named, is justly and truly  
indebted to the United States in the sum of  
\$19,363.65, with interest thereon as hereinafter  
stated; and,

2. That the nature of the said debt is internal  
revenue taxes due pursuant to law as follows:

Nature of Tax	Year or Taxable Period Ended	Amount of Tax	Interest
Income .....	1938	\$14,365.96	As provided by law
Income .....	1939	4,997.69	“ “ “ “

---

Total Principal, Only \$19,363.65

(For the information of the Referee and the  
Trustee, attention is directed to the fact that while  
this claim is filed in the proceeding in order that  
the parties interested shall have notice of the tax

liability, nevertheless this is a tax incurred during the course of the administration of the bankrupt estate, and is not to be considered as an ordinary tax claim.)

\*Note: The Collector of Internal Revenue should be notified before payment of this claim is made in order that advice may be given as to the amount of statutory interest due. (Telephone: Madison 7411, Station 731.)

3. That no part of said debt has been paid, but that the same is now due and payable at the office of the Collector of Internal Revenue at Los Angeles, Cal.

4. That there are no set-offs or counterclaims to said debt.

5. That the United States does not hold, and has not, nor has any person by its order, or to deponent's knowledge or belief, for its use, had or received any security or securities for said debt, except statutory liens.

6. That the said indebtedness is now due and payable; that no note or other negotiable instrument has been received for said debt or any part thereof; and that no judgment has been rendered thereon.

7. That said debt has priority, and must be paid in full in advance of distributions to creditors, as and to the extent provided in Section 64 or Section 659 of the Bankruptcy Act, Section 3466 of the

Revised Statutes, or other applicable provisions of law. Attention is also called to the provisions of Section 3467 of the Revised Statutes, with respect to the personal liability of every executor, administrator, assignee or other person who fails to pay the claims of the United States in accordance with their priority.

Dated this 19th day of July, 1940.

Collector of Internal Revenue for the Sixth District of California.

NAT ROGAN.

Subscribed and sworn to before me this 19th day of July, 1940.

(Seal) T. G. ALBRIGHT,  
Notary Public.

My commission expires October 22, 1940.

[Endorsed]: Filed July 22, 1940. Ernest R. Utley,  
Referee.

Filed Nov. 28, 1941. R. S. Zimmerman, Clerk.

[10]

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[Title of District Court and Cause.]

OBJECTIONS TO CLAIM OF UNITED  
STATES FILED THROUGH COLLECTOR  
OF INTERNAL REVENUE FOR \$19,363.65.

Comes now H. F. Metcalf, the duly appointed,  
qualified and acting Trustee in Bankruptcy in the



above entitled matter, and objects to the allowance of the claim of the United States filed by Nat Rogan, Collector of Internal Revenue for the Sixth Collection District of California, in the sum of \$19,363.65, on or about July 22, 1940, and as grounds of objection thereto alleges:

I.

That the undersigned, said H. F. Metcalf, as said Trustee in Bankruptcy, is not, nor is the estate of the above named bankrupt, indebted to the United States in the sum of \$19,363.65 or in any other sum or amount whatsoever, either as alleged in said claim or otherwise or at all.

II.

That heretofore and on the 12th day of January, 1937, F. P. Newport Corporation, Ltd. was duly adjudicated a bankrupt, and that thereafter and on the 18th day of March, 1937, the undersigned, H. F. Metcalf, was duly appointed Trustee in Bankruptcy of the above named bankrupt corporation, ever since has been and now is the duly appointed, qualified and acting Trustee in Bankruptcy of said estate; that ever since said time said Trustee in Bankruptcy has been engaged in preserving and conserving the assets of said estate pending the sale thereof; that a portion of such assets has been liquidated and sold; that said Trustee in Bankruptcy has not since his appointment and qualification, [11] as hereinbefore alleged, been conduct-

ing or operating the business or properties of such bankrupt estate, and has not, either in the year 1938 or 1939 or at any other time or at all, as such Trustee in Bankruptcy, received any income which is subject, under the laws of the United States, to an income tax.

### III.

That the purported assessment or purported claim of the United States for \$19,363.65 alleged income tax is without authority in law and is wholly devoid of merit.

### IV.

That the undersigned Trustee in Bankruptcy herein has heretofore complied with all requirements of the Treasury Department of the United States and has filed each year on the proper tax forms a statement of his receipts and disbursements, claiming that his receipts were wholly exempt from income tax under the laws of the United States; that heretofore and on or about August 9, 1940, he filed a written protest to the assessment of the alleged deficiency tax in said sum of \$19,363.65, and thereafter an oral hearing in relation thereto was had with a conferee of the Internal Revenue Agent in Charge of the Los Angeles Division.

Wherefore, the Trustee prays that a time and place be fixed for the hearing of these objections; that due notice thereof be given to the claimant, and that upon the hearing of these objections said

claim be disallowed; and for such other and further relief as may be proper in the premises.

H. F. METCALF,

As Trustee in Bankruptcy  
herein.

BAILIE, TURNER & LAKE,

By ALLEN T. LYNCH,

Attorneys for Trustee.

(Verified.)

[Endorsed]: Filed Sep. 27, 1940. Ernest R. Utley,  
Referee. Filed Nov. 28, 1941, R. S. Zimmerman,  
Clerk. [12]

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[Title of District Court and Cause.]

ORDER DISALLOWING CLAIM OF COLLEC-  
TOR OF INTERNAL REVENUE.

Be It Remembered:

That heretofore and on or about the 22nd day of July, 1940, Nat Rogan, as Collector of Internal Revenue for the Sixth Collection District of California, and as the duly authorized agent for the United States of America in that behalf, filed with this Court and in the above entitled proceeding, his claim for \$19,363.65, as and for alleged income taxes asserted to be due and payable by H. F. Metcalf, as Trustee in Bankruptcy of the above entitled bankrupt estate, for the years 1938 and 1939; that thereafter and on the 27th day of September, 1940,

said H. F. Metcalf, as such Trustee in Bankruptcy, duly filed his objections to the allowance of said claim, and the hearing thereon was duly set by this Court for the 18th day of October, 1940, and written notice of the hearing thereof was duly given to claimant; that thereafter the hearing of said matter was from time to time continued until the 31st day of December, 1940, at which time said matter came on regularly for hearing before this Court at the hour of 10:00 o'clock A. M., Eugene Harpole, Esq., Special Attorney for the Bureau of Internal Revenue, appearing as counsel for claimant, and Messrs. Bailie, Turner & Lake, by Allen T. Lynch, appearing as counsel for the Trustee in Bankruptcy; whereupon said matter was submitted for the decision of this Court upon a written stipulation of facts made and entered into by and between said claimant and said Trustee in Bankruptcy and filed with this Court; and the [13] Court having considered such stipulation of facts so filed and the memorandums of points and authorities filed on behalf of the respective parties and being fully advised in the premises, finds and concludes:

1. That neither said Trustee in Bankruptcy nor said bankrupt estate is indebted to the United States of America or said Collector of Internal Revenue in the sum of \$19,363.65, or in any other sum or amount whatever, either as alleged in said claim on file herein or otherwise or at all.

2. That the acts and transactions had and performed by the Trustee in Bankruptcy and referred to in said stipulation of facts were had, done, and

performed by said Trustee in Bankruptcy in compliance with and in the performance of his duties as such Trustee in Bankruptcy.

3. That said Trustee in Bankruptcy, in so performing said acts and in entering into and carrying out said transactions hereinbefore and in said stipulation of facts referred to, was not operating the property or business of the bankrupt corporation within the meaning of the terms and provisions of Section 52 (a) of the Internal Revenue Code of the United States of America, and therefore was not required to make any return or pay any income tax upon the monies received by him as such Trustee in Bankruptcy during the calender years of 1938 and 1939 or either of them.

It Is Therefore Ordered, Adjudged and Decreed that the objections filed by the Trustee in Bankruptcy to said claim hereinbefore referred to be and they are hereby sustained on each and every ground in said objections set forth, and that said claim so filed by said Collector of Internal Revenue in behalf of the United States of America for alleged income taxes in the sum of \$19,363.65 be and it is hereby disallowed.

Dated this 17th day of March, 1941.

ERNEST R. UTLEY,

Referee in Bankruptcy. [14]

[Endorsed]: Filed Mar. 17, 1941. Ernest R. Utley, Referee. Filed Nov. 28, 1941. R. S. Zimmerman, Clerk. [15]



[Title of District Court and Cause.]

MOTION FOR EXTENSION OF TIME WITH-  
IN WHICH TO FILE AN APPLICATION  
FOR REVIEW OF THE ORDER OF THE  
REFEREE.

Comes now United States of America and Nat Rogan, its Collector of Internal Revenue for the Sixth Collection District of California, by and through its attorneys, Wm. Fleet Palmer, United States Attorney for the Southern District of California, E. H. Mitchell, Assistant United States Attorney for said District, and Eugene Harpole, Special Attorney for the Bureau of Internal Revenue, and moves the Court that the time within which said Claimant may make application to the United States District Court for the Southern District of California for the review of the Order of the Referee in Bankruptcy herein dated March 14, 1941, and disallowing the claim for income taxes of the United States of America and said Nat Rogan, its Collector of Internal Revenue, be extended to and including the 23rd day of April, 1941.

Dated this 22nd day of March, 1941.

WM. FLEET PALMER,  
United States Attorney.

E. H. MITCHELL,  
Assistant U. S. Attorney.

EUGENE HARPOLE,  
Special Attorney.  
Bureau of Internal Revenue.

By EUGENE HARPOLE,

Attorneys for Claimant.

It Is So Ordered this 22nd day of March, 1941.

ERNEST R. UTLEY,

Referee in Bankruptcy.

[Endorsed]: Filed Mar. 22, 1941. Ernest R. Utley,  
Referee. [17]

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### CERTIFICATE OF TRUE COPY

United States of America,  
Southern District of California,  
Central Division—ss.

I, Ernest R. Utley, Referee in Bankruptcy in and for the County of Los Angeles, State of California, in and for the said district, do hereby certify that the foregoing is a true and correct copy of Motion for Extension of Time Within Which to File an Application for Review of the Order of the Referee and the Order Thereon in the above entitled matter as the same appears of record in the proceedings in said matter now on file in my office.

In Witness Whereof, I have hereunto set my hand this 29th day of April, 1942.

ERNEST R. UTLEY,

Referee in Bankruptcy.

[Endorsed]: Filed Apr. 29, 1942. R. S. Zimmerman, Clerk. [18]

In the District Court of the United States  
in and for the Southern District of California  
Central Division

In Bankruptcy No. 25,308-M

In the Matter of

F. P. NEWPORT CORPORATION, LTD.,  
a corporation,

Bankrupt.

### PETITION FOR REVIEW OF REFEREE'S ORDER

Comes now the United States of America, by and through its attorneys, and files this, its Petition for Review of that certain Order made and entered in the above entitled proceeding on the 17th day of March, 1941, which reads as follows, to-wit:

[Note: "Order Disallowing Claim of Collector of Internal Revenue" is here omitted pursuant to designation. Said order is set forth at page 15 of this printed record.] [19]

In this Petition for Review the United States of America alleges that the Referee in Bankruptcy erred in his said Order of March 17, 1941, in the following respects:

#### I.

That the Referee in Bankruptcy erred in disallowing the claim filed on July 22, 1940, by Nat Rogan as Collector of Internal Revenue for the Sixth Collection District of California on behalf of



the United States of America for Federal income taxes for the taxable years 1938 and 1939 in the sum of \$19,363.65 for the reason that said taxes were lawfully due to the United States upon the net income realized by the bankrupt estate from the operation of its property or business during said years.

## II.

That the Referee in Bankruptcy erred in failing and refusing to hold that the Trustee in Bankruptcy was, during the taxable years 1938 and 1939, operating the property or business of F. P. Newport Corporation, Ltd., the bankrupt, within the meaning of Section 52(a) of the Revenue Act of 1939 and the Internal Revenue Code and Section 19.52-2 of Treasury Regulations 103. [22]

## III.

That the Referee in Bankruptcy erred in holding that the net income of \$87,066.42 and \$30,288.99 determined by the Commissioner of Internal Revenue to have been received by said bankrupt's estate and its Trustee in Bankruptcy during the calendar years 1938 and 1939, respectively, was not subject to Federal income tax within the meaning of Section 52(a) of the Revenue Act of 1938 and of the Internal Revenue Code.

## IV.

That the Referee in Bankruptcy erred in failing to allow the claim filed July 22, 1940, on behalf of

the United States of America for 1938 and 1939 income taxes in the sum of \$19,363.65.

Wherefore, your petitioner prays that said Order be reversed and that said claim for 1938 and 1939 income taxes be allowed as filed and the Trustee in Bankruptcy directed to pay the same in the sum of \$19,363.65, together with interest as provided by law, forthwith.

Dated: April 22, 1941.

WM. FLEET PALMER, E. H.,

United States Attorney

E. H. MITCHELL, E.H.,

Asst. U. S. Attorney

EUGENE HARPOLE

Special Attorney,

Bureau of Internal Revenue,

Attorneys for Claimant.

[Endorsed]: Filed Apr. 22, 1941. Ernest R. Utley, Referee. Filed Nov. 28, 1941. R. S. Zimmerman, Clerk. [23]

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[Title of District Court and Cause.]

REFEREE'S CERTIFICATE ON REVIEW.

To the Honorable Paul J. McCormick, Judge of the  
United States District Court in and for the  
Southern District of California, Central Division:

I, Ernest R. Utley, Referee in Bankruptcy, to whom the proceedings in this matter were referred, do hereby certify:

That, on January 12, 1937, F. P. Newport Corporation, Ltd., a corporation, was duly adjudicated a bankrupt, and proceedings in relation to said bankrupt estate were duly referred to this Referee. That on March 18, 1937, H. F. Metcalf was duly appointed Trustee in Bankruptcy of said bankrupt estate, duly qualified as such, and ever since has been and now is the duly appointed, qualified and acting Trustee in Bankruptcy of said estate, and as such has been since March 18, 1937, in possession and control of all of the properties and assets of said bankrupt corporation.

That on July 22, 1940, Nat Rogan, as United States Collector of Internal Revenue for the Sixth Collection District of California, duly filed a claim in the above entitled bankruptcy proceedings in behalf of the United States of America for the sum of \$19,363.65, asserting thereby that there was due and owing the United States of America from and by said H. F. Metcalf, as such Trustee in Bankruptcy, said sum of \$19,363.65, as income tax determined and assessed by the Commissioner of Internal Revenue for the taxable years 1938 and 1939, the original of said claim being hereto attached [25] and made a part hereof.

Thereafter and on September 28, 1940, said H. F. Metcalf, as such Trustee in Bankruptcy, duly filed an objection to the allowance of said claim, which objection briefly stated was to the effect that the determination and assessment of said tax was wholly without authority and void in law, as said

Trustee in Bankruptcy was not during said taxable years, or either of them, operating the property or business of the bankrupt corporation within the meaning of the terms and provisions of Section 52a, Title 26 of the Internal Revenue Code, and that, by reason thereof his receipts as such Trustee in Bankruptcy during said years were not subject to the imposition of an income tax. The original of said objections of said Trustee in Bankruptcy to said claim is attached hereto and made a part hereof.

That thereafter and on the 30th day of December, 1940, a Stipulation of Facts was made and entered into by and between counsel representing said claimant and counsel representing said Trustee in Bankruptcy, the original of which is attached hereto and made a part hereof.

That thereafter briefs were submitted in behalf of the respective parties and the matter was taken under consideration by your Referee and on the 17th day of March, 1941, your Referee made and signed an order disallowing said claim so filed in behalf of the United States. The original of said order is attached hereto and made a part hereof.

That said order so signed and made by your Referee adjudicated and determined that said H. F. Metcalf, as such Trustee in Bankruptcy, was not indebted to the United States of America or said Collector of Internal Revenue in the said sum of \$19,363.65 or any other sum or amount whatsoever, and that the acts and transactions had and performed by the Trustee in Bankruptcy were had,



done and performed by said Trustee in Bankruptcy in compliance with and in performance of his duty as such Trustee in Bankruptcy, and that in so [26] acting he was not operating the property or business of the bankrupt corporation within the meaning of the terms and provisions of Section 52a of Title 26 of the Internal Revenue Code, and that therefore said Trustee in Bankruptcy was not required to make any return or pay any income tax upon the moneys received by him as such Trustee in Bankruptcy during the calendar years of 1938 and 1939, or either of them.

That the determination of your Referee of the issues involved was had after a full consideration of all of the facts referred to in said Stipulation of Facts hereinbefore mentioned, and from and after a careful consideration thereof your Referee concluded that the moneys so received by said Trustee in Bankruptcy were not taxable under the provisions of said taxing statute, as the Trustee in Bankruptcy was performing only the duties required of him under the Bankruptcy Act and was not operating the business or properties of the bankrupt corporation.

Your Referee is not summarizing the evidence herein, because the facts upon which your Referee's decision are based are set forth in the Stipulation of Facts hereinbefore mentioned and the exhibits thereto attached and therein referred to.

Your Referee submits herewith the following:

1. Claim filed by Nat Rogan, in behalf of the United States of America, for \$19,363.65.

2. Objections filed by the Trustee in Bankruptcy to said claim.
3. Order disallowing said claim.
4. Petition of United States of America for Review of said Order.
5. Stipulation of Facts made and entered into by and between counsel representing claimant and said Trustee in Bankruptcy. [27]
6. Petition for authorization, approval and confirmation of an oil and gas lease, and for order to show cause filed with the Referee on January 14, 1938.
7. The First, Second, Supplement to Second, and Third Reports filed with your Referee by said Trustee in Bankruptcy on March 29, 1938, December 8, 1938, December 22, 1938, and October 31, 1939, respectively.
8. Briefs filed with your Referee by the parties.

Dated this 27 day of June, 1941.

Respectfully submitted,

ERNEST R. UTLEY

Referee in Bankruptcy.

[Endorsed]: Filed Jun. 27, 1941. R. S. Zimmerman, Clerk. [28]

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[Title of District Court and Cause.]

Upon consideration of the referee's certificate on review and the referee's order disallowing claim of

the Collector of Internal Revenue, and upon the entire record of proceedings in the above entitled matter, it appears that subsequent to the hearing and submission of the petition for review herein, the Ninth Circuit Court of Appeals in *Perry v. Baumann*, decided September 4, 1941, has established a rule that has not been complied with in this matter. Now, therefore, the entire proceeding upon the claim of the Collector of Internal Revenue and objections to the allowance of said claim by the trustee in bankruptcy and all records certified and transmitted to the judge in this review are returned to the referee in bankruptcy with instructions for further proceedings and, specifically, for the preparation, making and entry of findings of fact, conclusions of law, and judgment or order, in conformity with the aforesaid decision of the Ninth Circuit Court of Appeals.

Dated October 23, 1941.

PAUL J. McCORMICK,

United States District Judge.

[Endorsed]: Filed Oct. 23, 1941. R. S. Zimmerman, Clerk. [30]

[Title of District, Court and Cause.]

FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND ORDER DISALLOWING CLAIM OF  
COLLECTOR OF INTERNAL REVENUE,  
AND ORDER VACATING AND SETTING  
ASIDE PRIOR ORDER DISALLOWING  
CLAIM OF COLLECTOR OF INTERNAL  
REVENUE.

Be It Remembered:

That heretofore and on or about the 22nd day of July, 1940, Nat Rogan, as Collector of Internal Revenue for the Sixth Collection District of California, and as the duly authorized agent for the United States of America in that behalf, filed with this Court and in the above entitled proceeding, his claim for \$19,363.65, as and for alleged income taxes asserted to be due and payable by H. F. Metcalf, as Trustee in Bankruptcy of the above entitled bankrupt estate, for the years 1938 and 1939; that thereafter and on the 27th day of September, 1940, said H. F. Metcalf, as such Trustee in Bankruptcy, duly filed in writing his objections to the allowance of said claim, and the hearing thereon was duly set by this Court for the 18th day of October, 1940, and written notice of the hearing thereof was duly given to claimant; that thereafter the hearing of said matter was from time to time continued until the 31st day of December, 1940, at which time said matter came on regularly for hearing before this Court, Ernest R. Utley, Referee in Bankruptcy, at



the hour of 10:00 o'clock A. M., Eugene Harpole, Esq., Special Attorney for the Bureau of Internal Revenue, appearing as counsel for claimant, and Messrs. Bailie, Turner & Lake appearing as counsel for the Trustee in Bankruptcy; whereupon said matter was submitted for the decision of this Court upon a written stipulation of facts made and entered into by and [31] between said claimant and said Trustee in Bankruptcy and on file with this Court; this Court, having considered such stipulation of facts so filed and the memorandum of points and authorities filed in behalf of the respective parties, and being fully advised in the premises, made and signed its order dated the 17th day of March, 1941, entitled Order Disallowing Claim of Collector of Internal Revenue; thereafter a petition to review said order was filed by and in behalf of said Collector of Internal Revenue, and the proceedings therein were duly certified and transmitted to the Honorable Paul J. McCormick, Judge of the above entitled court; that thereafter a hearing was had upon said review before the said Honorable Paul J. McCormick, as such judge, and on the 23rd day of October, 1941, the said Honorable Paul J. McCormick, as such judge, made and entered his order returning to this Court all records so certified and transmitted to him on said review, with instructions for this Court to take such further proceedings therein as might be necessary, and specifically for the preparation, making and entry of findings of fact, conclusions of law, and judgment or order

in conformity with the decision of the Ninth Circuit Court of Appeals in *Perry v. Baumann*, decided September 4, 1941;

Now, Therefore, in compliance with said order,  
It Is Ordered:

That said order entitled Order Disallowing Claim of Collector of Internal Revenue, dated March 17, 1941, and hereinbefore referred to, be and it is hereby vacated and set aside, and in place and in lieu thereof this Court adopts, makes and signs the following findings of fact, conclusions of law and order. [32]

### FINDINGS OF FACT.

The Court finds that:

1. The Commissioner of Internal Revenue determined deficiencies of \$14,365.96 and \$4,997.69 in the bankrupt's Federal income tax for the calendar years 1938 and 1939, respectively. Notice of the Commissioner's determination was sent to "F. P. Newport Corporation, Ltd., H. F. Metcalf, Trustee in Bankruptcy, 216 Central Building, 108 West Sixth Street, Los Angeles, California" by registered mail on July 13, 1940. On July 22, 1940, Nat Rogan, as United States Collector of Internal Revenue for the Sixth Collection District of California, filed a claim in the above entitled bankruptcy proceeding on behalf of the United States for the sum of \$19,363.65, representing the amount of alleged deficiencies in income tax so determined by the Com-

missioner of Internal Revenue for the taxable years 1938 and 1939. On September 28, 1940, the Trustee in Bankruptcy filed an objection in writing to the allowance of said claim.

2. The bankrupt, F. P. Newport Corporation, Ltd., was organized under the laws of the State of Delaware on December 2, 1929, and it afterward qualified to do business in the State of California. It was engaged in the real estate business in the State of California prior to March 19, 1935. In the conduct of said business it purchased large tracts of unimproved lands, subdivided portions of them into city lots, installed the essential public improvements and then endeavored to sell the lots, and did sell a great many of them. It also acted as a selling agent for many parcels of real property owned by other persons. It conducted its business for the purpose of making a profit.

3. On March 19, 1935, an involuntary petition in bankruptcy was filed against F. P. Newport Corporation, Ltd., in the United States District Court for the Southern District of California, Central Division, in case numbered 25,308-M, Bankruptcy. A receiver was thereupon appointed by the Court. All of the assets and affairs [33] of F. P. Newport Corporation, Ltd. were placed in the possession and control of said receiver. The receivership continued until January 12, 1937, when the corporation was adjudicated a bankrupt. H. F. Metcalf was appointed Trustee in Bankruptcy on March 18, 1937, and at all times since has been in possession and

control of all the property and assets of the bankrupt.

4. The properties and assets received from the bankrupt by said Trustee in Bankruptcy consisted of numerous parcels of real estate, both improved and unimproved, and other assets consisting of accounts, promissory notes, bills receivable and other tangible and intangible property.

5. At the date of bankruptcy record legal title to approximately ninety per cent of the real properties received by the Trustee in Bankruptcy stood in the name of the Security-First National Bank of Los Angeles, in trust, as security for an indebtedness owing said bank by said F. P. Newport Corporation, Ltd., as evidenced by a written declaration of trust numbered D-7224, formerly numbered SS-70401, signed by the bank, approved by the bankrupt, on March 1, 1930. At the date of filing the petition in bankruptcy said indebtedness exceeded \$1,300,000.00. Said bank filed a claim in the bankruptcy proceeding as an unsecured creditor in the amount of \$500,000.00, after crediting what it determined to be the value of the security held by it upon the indebtedness of F. P. Newport Corporation, Ltd. Claims filed against the bankrupt estate other than the claim of said bank exceed in all the sum of \$295,000.00, none of which have been paid by the Trustee in Bankruptcy, either in whole or in part.

6. For the purpose of avoiding a forced sale of said real properties and with the object of obtaining



time within which to liquidate the properties at a fair value, a contract was made and entered into by and between Security-First National Bank of Los Angeles, F. P. Newport Corporation, Ltd., the bankrupt, and the [34] Trustee in Bankruptcy with the approval of this Court. A copy of said agreement, with the supplements thereto and modifications thereof, is attached to said stipulation of facts, marked Exhibit "A", and is by reference made a part hereof, as fully and completely as though here copied and set forth at length.

7. Among the real properties title to which is so held by said bank under said declaration of trust are two parcels—one of three and the other of six acres, separated by an intervening three-acre parcel belonging to third persons. Both parcels are situated adjacent to what is known as Channel No. 3 of Long Beach Harbor in the City of Long Beach, California. During the pendency of the bankruptcy proceeding producing oil and gas wells were drilled and other wells were being drilled or about to be drilled on nearby lands which adjoined and surrounded said two parcels. It was feared by the Trustee and said Security-First National Bank of Los Angeles that the operation of these wells would drain away the oil and gas believed by the Trustee to underlie the same. The Trustee in Bankruptcy did not have sufficient funds to enable him to drill any oil or gas wells. By and with the approval of this Court, he leased the said two parcels of land to Universal Consolidated Oil Company, a copy of

which lease is attached to the Trustee's Petition for Authorization, Approval and Confirmation of an Oil and Gas Lease, and for Order to Show Cause, filed with the Court on January 14, 1938, reference to which is hereby made for further particulars, and the same is made a part hereof by said reference as fully and completely as though here copied and set forth at length. Other lots in the same general area which were not of sufficient size to be covered by separate leases, were included in a community oil and gas lease wherein the Bankline Oil Company was the lessee.

01 [ 8. Oil and gas royalties including bonuses actually paid to the Trustee under the terms and provisions of said leases during the year 1938 amounted to \$245,517.65 and during the year 1939 amounted [35] to \$206,333.36. These moneys were paid to the bank by the Trustee upon orders of this Court to cover taxes assessed against the properties, record legal title to which was so held by the bank as security for the indebtedness owing it, costs of engineering services for checking oil and gas production on the property leased to Universal Consolidated Oil Company, and to apply on account of the interest and principal owing on the secured debt of the said bank.

XX 9. From the sales of real estate made during 1938 the Trustee received \$5,600.00 and during 1939 \$18,650.00 from the same source. Eighty per cent of the moneys so obtained were paid to the bank by the Trustee upon order of the Court to apply on

18,650  
5,600  
13,050



account of the principal and interest owing said bank on its said secured debt. Twenty per cent of said receipts were retained by the Trustee and used by him in payment of expenses of administration.

10. The Trustee in Bankruptcy has endeavored at all times since his appointment to sell various properties of the bankrupt at prices commensurate with their value. Due to depressed market conditions, sales have been slow. The indebtedness of the estate is considerable and the Trustee has believed it to be to the best interest of the creditors not to sacrifice the properties by an immediate sale under the aforesaid conditions and, accordingly, has conducted a selling program which would enable him to spread his sales over a period of time and take advantage of favorable market conditions. All sales made by said Trustee were duly approved by order of Court. Pending sale, some of the unsubdivided properties, (other than the properties covered by the oil leases hereinbefore mentioned), have been rented by the Trustee mainly for agricultural purposes.

11. It was necessary for the Trustee from time to time to make repairs upon certain of the properties and to make or have made certain improvements on some properties to preserve them from hazards of fire and flood pending a sale thereof.

[36]

12. The Trustee in Bankruptcy has participated in all of the transactions set forth in his First, Second, Supplemental Second and Third Reports

and Accounts filed on March 29, 1938, December 8, 1938, December 22, 1938, and October 31, 1939, respectively. He has not engaged in the purchase or subdivision of real property nor acted as a selling agent for owners of property.

13. No general order of the Court authorizing the Trustee to conduct the business of the bankrupt corporation or forbidding him to do so has ever been made or signed. The Court has made orders authorizing the Trustee to lease, pending sale thereof, unsubdivided lands, grant easements and rights of way to the City of Los Angeles and County of Los Angeles for street purposes, make sales of real property, cancel leases of real property, make payments upon the indebtedness of the bankrupt, compromise claims against the bankrupt, enter into agreements with the City of Long Beach, California, concerning rights to oil and gas produced under the Universal Consolidated Oil Company lease hereinbefore mentioned pending determination of title disputes to the property covered by the lease, renew contracts with the Oil Field Testing and Engineering Company, Inc. for the checking of oil and gas production on said property, and to lease, pending sale, a barn belonging to the bankrupt estate for the storage of hay.

14. The Trustee in Bankruptcy has kept books of account and filed with the Collector of Internal Revenue a statement of his receipts and disbursements for the years 1938 and 1939, with the nota-

tion that there had been and was no taxable income for said years or either of them. The Internal Revenue Agent thereafter examined the Trustee's books and the Commissioner of Internal Revenue made his assessments, represented by his alleged claim on file herein upon figures compiled by said Agent from the Trustee's records as follows: [37]

1938

RECEIPTS

By sales of real estate approved by Court.....	\$ 5,500.00	✓
Interest on bankrupt's accounts.....	203.80	
Rents collected from miscellaneous properties.....	4,557.98	
Ranch rentals .....	1,792.50	
Collected on bankrupt's old accounts.....	2,007.00	
Cash bonus (Universal Consolidated Oil Co. lease) .....	25,000.00	
Oil bonus (Universal Consolidated lease).....	25,000.00	
Oil and gas royalties.....	195,517.65	
	<hr/>	
	\$259,578.93	

DEDUCTIONS ALLOWED BY COMMISSIONER

Bankrupt's costs on real estate sold.....	\$ 4,470.60	—
Commissions to brokers on sales.....	275.00	
Trustee's branch office expenses.....	407.34	
Verdugo tract upkeep expenses.....	126.53	
Other properties upkeep expenses.....	729.71	
Ranch upkeep expenses.....	191.30	
Title expenses Re: Sales made.....	74.10	
Interest paid Security-First National Bank.....	50,773.40	
Taxes paid on properties.....	21,705.76	
Trustee's office rent.....	1,440.00	
Telephone and telegraph.....	394.50	
Office supplies and expenses.....	885.58	
Salaries of Trustee's assistants.....	5,145.01	
Miscellaneous expenses including Trustee's bond .....	262.99	

Other expenses (Loss of assets through fore-closure) .....	1,735.56
Depreciation on office fixtures and equipment .....	614.52
Depletion (oil) .....	67,517.35
Expense of checking oil and gas production on properties leased to Universal.....	1,920.73
Bankruptcy fees allowed by Court.....	13,842.53

[38]

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Total .....\$172,512.51

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## Commissioner's Determination of Net

Income .....\$ 87,066.42

1939

## RECEIPTS

By sales of real estate approved by Court.....	\$ 19,450.00
Interest on contracts for sales of real estate..	17.53
Rents from miscellaneous properties.....	4,650.76
Ranch rentals .....	2,038.75
Other receipts by sales from miscellaneous personal properties .....	81.00

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Oil and gas royalties..... 206,333.36

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Total .....\$232,571.40

## DEDUCTIONS ALLOWED BY COMMISSIONER

Cost of real estate sold.....	\$ 30,770.40
Commissions to brokers on sales.....	1,256.50
Trustee's branch office expenses.....	1,418.98
Verdugo tract upkeep expenses.....	178.82
Ranch upkeep expenses.....	235.46
Other property upkeep expenses.....	1,462.30
Title expenses Re: sales made.....	424.70
Interest paid to Security-First National Bank	46,892.48
Taxes on properties.....	37,304.67
Trustee's office rent.....	320.00
Telephone and telegraph.....	334.06
Office supplies and expenses.....	1,173.81

Salaries to Trustee's assistants.....	4,727.53
Miscellaneous expenses including Trustee's bond .....	130.29
Expenses of checking production under Uni- versal Consolidated oil lease.....	3,982.50
Depreciation on office fixtures and equipment	621.50
Depletion (oil) .....	56,741.67
	[39]
Bankruptcy fees allowed by Court.....	14,306.82
Total .....	<hr/> \$202,282.41 <hr/>
Commissioner's determination of net income .....	\$ 30,288.99

## CONCLUSIONS OF LAW

From the foregoing findings of fact, this Court concludes as a matter of law:

1. That said Trustee in Bankruptcy, H. F. Metcalf, in performing the acts and entering into and carrying out the transactions as hereinbefore found by this Court, was not operating the property or business of the bankrupt corporation within the meaning of the terms and provisions of Section 52 (a) of the Internal Revenue Code of the United States of America, and therefore was not required to make any return or pay any income tax upon the moneys received by him as such Trustee in Bankruptcy during the said calendar years of 1938 and 1939 or either of them.

2. That the acts and transactions had and performed by the Trustee in Bankruptcy, as hereinbefore found by this Court, were had, done and



performed by said Trustee in Bankruptcy in compliance with the provisions of the Acts of Congress of the United States of America relating to bankruptcy, and in performance of his duties as such Trustee in Bankruptcy, as provided and set forth in said Acts relating to bankruptcy.

3. That neither said Trustee in Bankruptcy nor said bankrupt estate is indebted to the United States of America or said Collector of Internal Revenue, as alleged and set forth in said claim so filed by the Collector of Internal Revenue, either in the sum of \$19,363.65 or in any other sum or amount whatever.

4. That the objections filed by the Trustee in Bankruptcy to said claim of the Collector of Internal Revenue should be sustained upon each and every ground in said objections set forth and said claim [40] disallowed.

Let an order be made accordingly.

#### Order

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed that the objections filed by the said Trustee in Bankruptcy herein, H. F. Metcalf, to the claim hereinbefore filed in these proceedings by Nat Rogan, as Collector of Internal Revenue for the Sixth Collection District of California, and as the duly authorized agent for the United States of America in that behalf, for \$19,363.65, as and for alleged income taxes asserted to be due and payable



by said Trustee in Bankruptcy for the years 1938 and 1939, be and they are hereby sustained on each and every ground in said objections set forth, and the said claim so filed by said Collector of Internal Revenue for the sum of \$19,363.65 be and it is hereby disallowed.

Dated this 12th day of November, 1941.

ERNEST R. UTLEY,

Referee in Bankruptcy.

Approved as to form pursuant to Rule 44:

WM. FLEET PALMER,

United States Attorney.

E. H. MITCHELL,

Asst. United States Attorney.

EUGENE HARPOLE,

Special Attorney,

Bureau of Internal Revenue.

By EUGENE HARPOLE,

Attorneys for United States of  
America and Nat Rogan, Col-  
lector of Internal Revenue.

[Endorsed]: Filed Nov. 12, 1941. Ernest R. Utley,  
Referee. Filed Nov. 28, 1941. R. S. Zimmerman,  
Clerk. [41]

[Title of District Court and Cause.]

PETITION FOR REVIEW OF REFEREE'S  
ORDER

Comes now The United States of America, by and through its attorneys, and files this, its Petition for Review of that certain Order made and entered in the above entitled proceeding on the 12th day of November, 1941, which reads as follows, to-wit:

[Note: "Findings of fact, conclusions of law and order disallowing claim of collector of internal revenue, and order vacating and setting aside prior order disallowing claim of collector of internal revenue" are here omitted pursuant to designation. Said Findings, etc. are set forth at page 28 of this printed record.]

[43]

In this Petition for Review the United States of America alleges that the Referee in Bankruptcy erred in his said Order of November 12, 1941, in the following respects:

I.

That the Referee in Bankruptcy erred in disallowing the claim filed on July 22, 1940, by Nat Rogan as Collector of Internal Revenue for the Sixth Collection District of California on behalf of the United States of America for Federal income taxes for the taxable years 1938 and 1939 in the sum of \$19,363.65 for the reason that said taxes were lawfully due to the United States upon the

net income realized by the bankrupt estate from the operation of its property or business during said years.

II.

That the Referee in Bankruptcy erred in failing and refusing to hold that the Trustee in Bankruptcy was, during the taxable years 1938 and 1939, operating the property or business of F. P. Newport Corporation, Ltd., the bankrupt, within the meaning of Section 52 (a) of the Revenue Act of 1939 and the Internal Revenue Code and Section 19.52-2 of Treasury Regulations 103.

III.

That the Referee in Bankruptcy erred in holding that the net income of \$87,066.42 and \$30,288.99 determined by the Commissioner of Internal Revenue to have been received by said bankrupt's estate and its Trustee in Bankruptcy during the calendar years 1938 and 1939, respectively, was not subject to Federal income tax within the meaning of Section 52(a) of the Revenue Act of 1938 and of the Internal Revenue Code. [57]

IV.

That the Referee in Bankruptcy erred in failing to allow the claim filed July 22, 1940, on behalf of the United States of America for 1938 and 1939 income taxes in the sum of \$19,363.65.

Wherefore, your petitioner prays that said Order be reversed and that said claim for 1938 and 1939

income taxes be allowed as filed and the Trustee in Bankruptcy directed to pay the same in the sum of \$19,363.65, together with interest as provided by law, forthwith.

Dated: November 18, 1941.

WM. FLEET PALMER, E. H.

United States Attorney.

E. H. MITCHELL, E. H.

Asst. U. S. Attorney.

EUGENE HARPOLE,

Special Attorney,

Bureau of Internal Revenue.

Attorneys for Claimant.

[Endorsed]: Filed Nov. 22, 1941. Ernest R. Utley, Referee. Filed Nov. 28, 1941. R. S. Zimmerman, Clerk. [58]

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[Title of District Court and Cause.]

#### REFEREE'S CERTIFICATE ON REVIEW

To the Honorable Paul J. McCormick, Judge of the United States District Court in and for the Southern District of California, Central Division:

I, Ernest R. Utley, Referee in Bankruptcy, to whom the proceedings in this matter were referred, do hereby certify:

That on January 12, 1937, F. P. Newport Corporation, Ltd., a corporation, was duly adjudicated

a bankrupt, and proceedings in relation to said bankrupt estate were duly referred to this Referee. That on March 18, 1937, H. F. Metcalf was duly appointed Trustee in Bankruptcy of said bankrupt estate, duly qualified as such, and ever since has been and now is the duly appointed, qualified and acting Trustee in Bankruptcy of said estate, and as such has been since March 18, 1937, in possession and control of all of the properties and assets of said bankrupt corporation.

That on July 22, 1940, Nat Rogan, as United States Collector of Internal Revenue for the Sixth Collection District of [60] California, duly filed a claim in the above entitled bankruptcy proceedings in behalf of the United States of America for the sum of \$19,363.65, asserting thereby that there was due and owing the United States of America from and by said H. F. Metcalf, as such Trustee in Bankruptcy, said sum of \$19,363.65, as income tax determined and assessed by the Commissioner of Internal Revenue for the taxable years 1938 and 1939. The original of said claim accompanies this certificate.

Thereafter and on September 28, 1940, said H. F. Metcalf, as such Trustee in Bankruptcy, duly filed his objections to the allowance of said claim, which objections, briefly stated, were to the effect that the determination and assessment of said tax was wholly without authority and void in law, as said Trustee in Bankruptcy was not during said taxable years, or either of them, operating the property



or business of the bankrupt corporation within the meaning of the terms and provisions of Section 52a, Title 26 of the Internal Revenue Code of the United States, and that by reason thereof his receipts as such Trustee in Bankruptcy during said years were not subject to the imposition of an income tax. The original of said objections of said Trustee in Bankruptcy to said claim is attached hereto.

That thereafter and on the 30th day of December, 1940, a Stipulation of Facts was made and entered into by and between counsel representing said claimant and counsel representing said Trustee in Bankruptcy. The original of said Stipulation of Facts is attached hereto.

That thereafter briefs were submitted in behalf of the respective parties and the matter was taken under consideration by your Referee and on the 17th day of March, 1941, your Referee made and signed an order disallowing said claim so filed in behalf of the United States. The original of said order is attached hereto. [61]

That said order so signed and made by your Referee adjudicated and determined that said H. F. Metcalf, as such Trustee in Bankruptcy, was not indebted to the United States of America or said Collector of Internal Revenue in the said sum of \$19,363.65 or any other sum or amount whatsoever, and that the acts and transactions had and performed by the Trustee in Bankruptcy were had, done and performed by said Trustee in Bankruptcy



in compliance with and in performance of his duty as such Trustee in Bankruptcy, and that in so acting he was not operating the property or business of the bankrupt corporation within the meaning of the terms and provisions of Section 52a of Title 26 of the Internal Revenue Code of the United States, and that therefore said Trustee in Bankruptcy was not required to make any return or pay any income tax upon the moneys received by him as such Trustee in Bankruptcy during the calendar years of 1938 and 1939, or either of them.

Thereafter and within the time allowed by law the United States of America filed its petition for review of the said order hereinbefore mentioned, and on or about the 27th day of June, 1941, the undersigned Referee filed or caused to be filed his certificate on review; thereafter and on October 23, 1941, the Court made its order directing that the entire record on said review be returned to the undersigned Referee, with instructions by the Court that the Referee make and prepare findings of fact, conclusions of law, and judgment or order, in conformity with the decision of the Ninth Circuit Court of Appeals in the case of *Perry v. Baumann*, decided September 4, 1941.

Thereafter and in conformity with said order, the Referee duly made, signed and filed his order setting aside and vacating the order of March 17, 1941, and made, signed and filed findings of fact, conclusions of law and order in lieu and in place of the order so vacated. Said findings of fact, con-

clusions of law, and order disallowing claim of the Collector of Internal Revenue and order [62] vacating and setting aside prior order disallowing claim of Collector of Internal Revenue are attached to this certificate, hereby referred to and made a part hereof.

Briefly summarized, the Referee concluded from the facts, found by the Referee as set forth in the attached findings of fact, that the Trustee in Bankruptcy was not during the period referred to therein operating the property or business of the bankrupt corporation within the meaning of the terms and provisions of Section 52a of Title 26 of the Internal Revenue Code of the United States, and therefore was not required to pay any tax upon the moneys received by him as such Trustee in Bankruptcy; that the acts and transactions had and performed by said Trustee as found by the Referee were done and performed by the Trustee in compliance with the provisions of the Acts of Congress of the United States of America relating to bankruptcy; that the objections filed by the Trustee in Bankruptcy to the claim of the United States of America filed through its Collector of Internal Revenue for the sum of \$19,363.65 should be sustained and the said claim disallowed, and in accordance therewith the Referee made his order sustaining said objections and disallowing said claim.

The Referee is not summarizing the evidence herein, since the evidence is contained and set forth

in the Stipulation of Facts hereinbefore mentioned and the exhibits thereto attached and therein referred to, all of which accompany this certificate.

That the United States of America has duly filed its petition for review of the Referee's findings of fact, conclusions of law and order hereinbefore mentioned, and dated the 12th day of November, 1941. The original of said petition accompanies this certificate.

The Referee submits herewith the following:

1. Claim filed by Nat Rogan, in behalf of the United States of America, for \$19,363.65.

[63]

2. Objections filed by the Trustee in Bankruptcy to said claim.

3. Order of March 17, 1941, disallowing said claim.

4. Stipulation of Facts made and entered into by and between counsel representing claimant and said Trustee in Bankruptcy.

5. Findings of fact, conclusions of law, and order disallowing claim of Collector of Internal Revenue, and order vacating and setting aside prior order disallowing claim of Collector of Internal Revenue.

6. Petition for authorization, approval and confirmation of an oil and gas lease, and for order to show cause, filed with the Referee on January 14, 1938.

7. The First, Second, Supplement to Second, and Third Reports filed with the Referee by

said Trustee in Bankruptcy on March 29, 1938, December 8, 1938, December 22, 1938, and October 31, 1939, respectively.

8. Petition of the United States of America for review of Referee's order, dated November 12, 1941.

9. Briefs or memorandums of points and authorities filed with the Referee for and on behalf of the parties to this matter.

Dated this 28th day of November, 1941.

Respectfully submitted,

ERNEST R. UTLEY,

Referee in Bankruptcy.

[Endorsed]: Filed Nov. 28, 1941. R. S. Zimmerman, Clerk. [64]

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[Title of District Court and Cause.]

### STIPULATION OF FACTS

It Is Hereby Stipulated and Agreed by and between H. F. Metcalf, as Trustee in Bankruptcy of the above named bankrupt corporation, and the United States of America and Nat Rogan, its Collector of Internal Revenue, through their undersigned counsel, respectively, that for the purpose of ruling upon the objections of the Trustee in Bankruptcy hereto filed to the claim for income taxes presented on behalf of the United States of America by Nat Rogan, Collector of Internal Revenue, for the sum of \$19,363.65 for the taxable years

1938 and 1939, the following facts may be taken as true:

### I.

The Commissioner of Internal Revenue determined deficiencies of \$14,365.96 and \$4,997.69 in the bankrupt's Federal income tax for the calendar years 1938 and 1939, respectively. Notice of the Commissioner's determination was sent to "F. P. Newport Corporation, Ltd., H. F. Metcalf, Trustee in Bankruptcy, 216 Central Building, 108 West Sixth Street, Los Angeles, California" by registered mail on July 13, 1940. On July 22, 1940, Nat Rogan, as United States Collector of Internal Revenue for the Sixth Collection District of California, filed a claim in the above entitled bankruptcy proceeding on [66] behalf of the United States for the sum of \$19,363.65, representing the amount of alleged deficiencies in income tax so determined by the Commissioner of Internal Revenue for the taxable years 1938 and 1939. On September 28, 1940, the Trustee in Bankruptcy filed an objection to the allowance of said claim.

### II.

The bankrupt, F. P. Newport Corporation, Ltd., was organized under the laws of the State of Delaware on December 2, 1929, and it afterward qualified to do business in the State of California. It was engaged in the real estate business in the State of California prior to March 19, 1935. In the conduct of said business it purchased large tracts of



unimproved lands, subdivided portions of them into city lots, installed the essential public improvements and then endeavored to sell the lots, and did sell a great many of them. It also acted as a selling agent for many parcels of real property owned by other persons. It conducted its business for the purpose of making a profit.

### III.

On March 19, 1935, an involuntary petition in bankruptcy was filed against F. P. Newport Corporation, Ltd., in the United States District Court for the Southern District of California, Central Division, in case numbered 25,308-M, Bankruptcy. A receiver was thereupon appointed by the Court. All of the assets and affairs of F. P. Newport Corporation, Ltd. were placed in the possession and control of said receiver. The receivership continued until January 12, 1937, when the corporation was adjudicated a bankrupt. H. F. Metcalf was appointed Trustee in Bankruptcy on March 18, 1937, and at all times since has been in possession and control of all the property and assets of the bankrupt. [67]

### IV.

The properties and assets received from the bankrupt by its Trustee consisted of numerous parcels of real estate, both improved and unimproved, and other assets consisting of accounts, promissory notes, bills receivable and other tangible and intangible property.



## V.

At the date of bankruptcy record legal title to approximately ninety per cent of the real properties received by the Trustee in Bankruptcy stood in the name of the Security-First National Bank of Los Angeles, in trust, as security for an indebtedness owing said bank by said F. P. Newport Corporation, Ltd., as evidenced by a written declaration of trust numbered D-7224, formerly numbered SS-70401, signed by the bank, approved by the bankrupt, on March 1, 1930. At the date of filing the petition in bankruptcy said indebtedness exceeded \$1,300,000.00. Said bank filed a claim in the bankruptcy proceeding as an unsecured creditor in the amount of \$500,000.00, after crediting what it determined to be the value of the security held by it upon the indebtedness of F. P. Newport Corporation, Ltd. Claims filed against the bankrupt estate other than the claim of said bank exceed in all the sum of \$295,000.00, none of which have been paid by the Trustee in Bankruptcy, either in whole or in part.

## VI.

For the purpose of avoiding a forced sale of said real properties and with the object of obtaining time within which to liquidate the properties at a fair value, a contract was made and entered into by and between Security-First National Bank of Los Angeles, F. P. Newport Corporation, Ltd., the bankrupt, and the Trustee in Bankruptcy with the ap-

proval of this Court. A copy of said agreement, [68] with the supplements thereto and modifications thereof is hereby attached, marked Exhibit "A" and by reference made a part hereof.

## VII.

Among the real properties title to which is so held by said bank under said Declaration of Trust are two parcels—one of three and the other of six acres, separated by an intervening three-acre parcel belonging to third persons. Both parcels are situated adjacent to what is known as Channel No. 3 of Long Beach Harbor in the City of Long Beach, California. During the pendency of the bankruptcy proceeding producing oil and gas wells were drilled and other wells were being drilled or about to be drilled on nearby lands which adjoined and surrounded said two parcels. It was feared by the Trustee and said Security-First National Bank that the operation of these wells would drain away the oil and gas believed by the trustee to underlie the same. The Trustee in Bankruptcy did not have sufficient funds to enable him to drill any oil or gas wells. By and with the approval of the Court, he leased the said two parcels of land to Universal Consolidated Oil Company, a copy of which lease is attached to the Trustee's Petition for Authorization, Approval and Confirmation of an Oil and Gas Lease, and for Order to Show Cause, filed with the Court on January 14, 1938, reference to which is hereby made for further particulars, and the same is made part

hereof by said reference. Other lots in the same general area which were not of sufficient size to be covered by separate leases, were included in a community oil and gas lease wherein the Bankline Oil Company was the lessee.

### VIII.

Oil and gas royalties, including bonuses actually paid to the Trustee under said leases during the year 1938 amounted to \$245,517.65 and during the year 1939 amounted to \$206,333.36. These [69] moneys were paid to the bank by the Trustee upon orders of Court to cover taxes assessed against the properties, costs of engineering services and checking oil and gas production and to apply on account to the interest and principal owing the said bank by the bankrupt.

### IX.

From the sales of real estate made during 1938 the Trustee received \$5,500.00 and during 1939 \$18,650.00 from the same source. Eighty per cent of the moneys so obtained were paid to the bank by the Trustee upon order of the Court to apply on account of the principal and interest owing said bank. Twenty per cent of said receipts were retained by the Trustee and used by him in payment of expenses of administration.

### X.

The Trustee in Bankruptcy has endeavored at all times since his appointment to sell various prop-

erties of the bankrupt at prices commensurate with their value. Due to depressed market conditions, sales have been slow. The indebtedness of the estate is considerable and the Trustee has believed it to be to the best interest of the creditors not to sacrifice the properties by an immediate sale under the aforesaid conditions and, accordingly, has conducted a selling program which would enable him to spread his sales over a period of time and take advantage of favorable market conditions. All sales made by said Trustee were duly approved by order of Court. Pending sale, some of the properties (other than the properties covered by the oil leases hereinbefore mentioned) have been rented by the Trustee mainly for agricultural purposes.

## XI.

It was necessary for the Trustee from time to time to make repairs upon certain of the properties and to make or have made certain [70] improvements on some properties to preserve them from hazards of fire and flood.

## XII.

The Trustee in Bankruptcy has participated in all of the transactions set forth in his First, Second, Supplemental Second and Third Reports and Accounts filed on March 29, 1938, December 8, 1938, December 22, 1938, and October 31, 1939, respectively. He has not engaged in the purchase or subdivision of real property nor acted as a selling agent for owners of property.

## XIII.

No general order of the Court authorizing the Trustee to conduct the business of the bankrupt corporation or forbidding him to do so has ever been made or signed. The Court has made orders authorizing the Trustee to make leases of agricultural lands, grant easements, rights of way for streets, make sales of real property, cancel leases of real property, make payments upon the indebtedness of the bankrupt, compromise claims against the bankrupt, to enter agreements with the City of Long Beach, California, concerning rights to oil and gas produced under the Universal Consolidated Oil Company lease hereinbefore mentioned pending determination of title disputes, to renew contracts with the Oil Field Testing and Engineering Company, Inc. and to lease a barn belonging to the bankrupt estate for the storage of hay.

## XIV.

The Trustee in Bankruptcy has kept books of account and filed with the Collector of Internal Revenue a statement of his receipts and disbursements for the years 1938 and 1939, with the notation that there had been and was no taxable income for said years or [71] either of them. The Internal Revenue Agent thereafter examined the Trustee's books and the Commissioner of Internal Revenue made his assessments, represented by his alleged claim on file herein upon figures compiled by said Agent from the Trustee's records as follows:



1938

## RECEIPTS

By sales of real estate approved by Court.....	\$ 5,500.00
Interest on bankrupt's accounts.....	203.80
Rents collected from miscellaneous properties .....	4,557.98
Ranch rentals .....	1,792.50
Collected on bankrupt's old accounts.....	2,007.00
Cash bonus (Universal Consolidated Oil Co. lease) .....	25,000.00
Oil bonus (Universal Consolidated lease).....	25,000.00
Oil and gas royalties.....	195,517.65
<b>Total .....</b>	<b>\$259,578.93</b>

## DEDUCTIONS ALLOWED BY COMMISSIONER

Bankrupt's costs on real estate sold.....	\$ 4,470.60
Commissions to brokers on sales.....	275.00
Trustee's branch office expenses.....	407.34
Verdugo tract upkeep expenses.....	126.53
Other properties upkeep expenses.....	729.71
Ranch upkeep expenses.....	191.30
Title expenses Re: Sales made.....	74.10
Interest paid Security-First National Bank.....	50,773.40
Taxes paid on properties.....	21,705.76
Trustee's office rent.....	1,440.00
Telephone and telegraph.....	394.50
Office supplies and expenses.....	885.58
Salaries of Trustee's assistants.....	5,145.01
Miscellaneous expenses including Trustee's bond .....	262.99
Other expenses (Loss of assets through foreclosure) .....	1,735.56
	<b>[72]</b>
Depreciation on office fixtures and equipment .....	614.52
Depletion (oil) .....	67,517.35
Expense of checking oil and gas production on properties leased to Universal.....	1,920.73

Bankruptcy fees allowed by Court.....	13,842.53
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Total .....	\$172,512.51
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## Commissioner's Determination of Net

Income .....	\$ 87,066.42
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1939

## RECEIPTS

By sales of real estate approved by Court.....	\$ 19,450.00
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Interest on contracts for sales of real estate..	17.53
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Rents from miscellaneous properties.....	4,650.76
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Ranch rentals .....	2,038.75
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Other receipts by sales from miscellaneous personal properties .....	81.00
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Oil and gas royalties.....	206,333.36
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Total .....	\$232,571.40
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## DEDUCTIONS ALLOWED BY COMMISSIONER

Cost of real estate sold.....	\$ 30,770.40
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Commissions to brokers on sales.....	1,256.50
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Trustee's branch office expenses.....	1,418.98
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Verdugo tract upkeep expenses.....	178.82
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Ranch upkeep expenses.....	235.46
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Other property upkeep expenses.....	1,462.30
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Title expenses Re: sales made.....	424.70
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Interest paid to Security-First National Bank	46,892.48
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Taxes on properties.....	37,304.67
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Trustee's office rent.....	320.00
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Telephone and telegraph.....	334.06
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Office supplies and expenses.....	1,173.81
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[73]

Salaries to Trustee's assistants.....	4,727.53
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Miscellaneous expenses including Trustee's bond .....	130.29
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Expenses of checking production under Uni- versal Consolidated oil lease.....	3,982.50
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Depreciation on office fixtures and equipment	621.50
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Depletion (oil) .....	56,741.67
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Bankruptcy fees allowed by Court..... 14,306.82

Total .....\$202,282.41

Commissioner's determination of net  
income .....\$ 30,288.99

Dated: This 30th day of December, 1940.

WM. FLEET PALMER—E. H.

United States Attorney

E. H. MITCHELL—E. H.

Asst. U. S. Attorney

EUGENE HARPOLE

Special Attorney,

Bureau of Internal Revenue.

Attorneys for United States

of America and Nat Rogan,

Collector of Internal Revenue.

BAILIE, TURNER & LAKE

By ALLEN T. LYNCH

Attorneys for H. F. Metcalf,

Trustee in Bankruptcy of F.

P. Newport Corporation, Ltd.,

Bankrupt.

Approved:

H. F. METCALF

Trustee.

Dec. 27, 1940. [74]

EXHIBIT "A"

AGREEMENT

This Agreement, made and entered into this 12th day of January, 1937, by and between F. P. Newport Corporation, Ltd., a Delaware Corporation, with its principal place of business in the City of Los Angeles, State of California, hereinafter called the Bankrupt, H. F. Metcalf, as Receiver for F. P. Newport Corporation, Ltd., an alleged Bankrupt, hereinafter called the Receiver, and Security-First National Bank of Los Angeles, a National Banking Association, with its principal place of business in the City of Los Angeles, State of California, hereinafter called the Bank,

Witnesseth:

Recitals:

The Bankrupt is indebted to the Bank for money loaned to the Bankrupt, or advanced for its use, under the terms of the Trust Declaration, hereinafter referred to, and for costs and expenses incurred by the Bank in connection therewith, in the following sums, to wit:

1. Unpaid principal, evidenced by promissory notes executed by the Bankrupt to the Bank ..... \$1,013,928.78
2. Interest on said notes up to February 1, 1937 ..... 219,887.25
3. Trust advances for benefit of the Trust Estate, under the terms of said Trust..... 105,365.93
4. Interest on said Trust advances to February 1, 1937..... 9,871.75

5. Necessary costs and expenses incurred by the Trustee in connection with the preservation of the Bank's security for its indebtedness .....	2,402.67
6. Interest thereon to February 1, 1937.....	273.00
Total.....	<hr/> \$1,351,729.38

All of said indebtedness is secured by the property conveyed by the Bankrupt to the Bank, as Trustee, in Trust with power of sale, to secure the same, and by a Pledge by the Bankrupt of the entire beneficial interest in and [75] to the said Trust. Said Trust is evidenced by a written Declaration of Trust No. D 7224, formerly numbered as SS 70401, signed by the Bank under date of March 1, 1930, and approved on said date by the Bankrupt. Reference is hereby made to said Declaration of Trust for the full terms and conditions thereof.

All of said indebtedness is long overdue, and no interest on said indebtedness has been paid by the Bankrupt for several years and all taxes and assessments on the Trust properties have been advanced by the Bank for several years.

An involuntary Petition to have the Bankrupt adjudicated a Bankrupt, has been pending since the month of March, 1935. Said Petition is at issue, but is still undecided.

Upon the filing of said involuntary Petition in Bankruptcy, to wit: on or about the 27th day of March, 1935, the Bankruptcy Court before which said Petition was pending, issued its Order restraining and enjoining the Bank from foreclosing



its said security for said indebtedness. Said restraining order is now, and ever since said date has remained in full force and effect.

On or about the 27th day of March, 1935, the Court appointed the above named Receiver, H. F. Metcalf, as Receiver in Bankruptcy, for properties of the Bankrupt, and he thereupon duly qualified and ever since said date has been, and now is, acting as such Receiver.

The Bankrupt and the Receiver are desirous of further postponing the foreclosure by the Bank of said security, for nonpayment of said indebtedness, and are desirous of starting the immediate liquidation of said indebtedness of the Bank, by the sale of certain of the real properties held by the Bank in said above referred to Trust. [76]

The Bank is willing to delay further the foreclosure of the said security and will agree to the immediate sale of certain of the assets in said Trust on the terms, and subject to the conditions herein-after contained, and not otherwise, hence this Agreement.

The Agreement.

Order of Court Allowing Receiver to Execute Required.

The Receiver agrees to petition the Bankruptcy Court forthwith for leave to execute this agreement. Should the Court refuse to grant leave to the Receiver to so execute this agreement, and thereafter the Receiver fail to execute it, the Bank, at its

election, shall have the right to cancel this agreement.

### Adjudication of Bankruptcy Required.

The Bankrupt, F. P. Newport Corporation, Ltd., agrees that it will make no resistance whatever in the pending petition to have it declared a bankrupt, said Petition and Answer now being set for hearing on January 12, 1937, before the Honorable Paul J. McCormick, Judge of the Bankruptcy Court. It is understood and agreed that unless a Decree adjudicating said corporation a Bankrupt be entered prior to the 15th day of January, 1937, and that said order thereafter become final without appeal, that this contract, at its option, may be terminated and cancelled by the Bank.

### Approval by Trustee and Court.

Immediately upon a Trustee in Bankruptcy being appointed by the Court in said proceeding, this contract shall be presented, by proper petition of the Trustee, to the Bankruptcy Court, for its approval, and for an order authorizing the said Trustee in Bankruptcy to become a party thereto and be bound by the terms and conditions thereof. The approval of the said Bankruptcy Court and the due execution of this Contract by the said Trustee shall be conditions precedent to the said contract continuing as a binding and effective obligation [77] on the Bank, and should said Court refuse to approve this agreement, or should the Trustee fail to execute the same, and become bound by all of the terms and conditions

thereof within five (5) days after the order approving the same has been entered, then this contract shall become utterly void and of no further force and effect, and the Bank shall be relieved of any and all obligations thereunder.

#### Reduction of Indebtedness.

Provided the above conditions are complied with, the Bank agrees to reduced the amount of the debt due it from the Bankrupt, as of the first day of February, 1937, to the sum of \$1,270,451.12, and to waive the difference between the amounts due as of said date, and said sum of \$1,270,451.12.

#### Reduction of Interest.

The said sum of \$1,270,451.12 shall bear interest, from February 1, 1937, at the rate of four per cent (4%) per annum, payable quarterly, and if not so paid, to bear like interest as the principal. It is agreed, however, that the first installments of interest shall be payable on August 1, 1937.

The principal of said indebtedness shall be payable as follows:

1. \$ 35,000.00 on or before six months from  
February 1, 1937.
2. \$ 65,000.00 on or before 12 months from  
February 1, 1937.
3. \$250,000.00 on or before 24 months from  
February 1, 1937.
4. \$150,000.00 on or before 30 months from  
February 1, 1937.

5. The balance of said indebtedness on or before thirty-six (36) months from February 1, 1937.

**Foreclosure of Security for Breach of Agreement.**

So long as all of the terms and conditions of this agreement are complied with by the other parties hereto, the Bank agrees not to foreclose the security held for the payment of said indebtedness.

It is distinctly understood and agreed, however, [78] that should any installment of principal or interest be not paid as herein provided, or any taxes or assessments, be not paid ten days prior to the delinquency thereof, or any of the terms and conditions of this agreement and the Declaration of Trust, herein referred to, be not complied with in the manner and at the times herein, and in said Declaration of Trust provided, that the Bank, except as otherwise provided for herein, may at its option call immediately due and payable the entire amount of the indebtedness then owing by the Bankrupt, or the Bankrupt Estate, and may immediately foreclose the security held by it, by such procedure as is provided for in said Declaration of Trust, or may foreclose the same by an action in court; provided, however, that the Bank expressly waives the right to foreclose the beneficial interest in said Trust as a pledge, as provided for in said Declaration of Trust, and also waives the provision of said trust contained on page 12 commencing in line 23 with the word "or" and up to and including the word "code" in line 27. Notwithstanding anything

to the contrary herein contained, it is agreed that the Bankrupt, or the Trustee in Bankruptcy shall have sixty (60) days after written notice within which to remedy any default for which notice has been given, before the Bank shall have the right to accellerate deferred payments of said indebtedness, and commence foreclosure of said security. The said sixty day notice herein provided for, shall be deemed the sixty day notice provided for in said declaration of Trust.

#### Waiver of Statute of Limitations.

In consideration of the execution of this agreement, the Bankrupt, the Receiver and the Trustee, when appointed, qualified, and upon becoming a party hereto, [79] expressly waive the provisions of any statute limiting the time when any action may be brought by the Bank on the indebtedness hereinabove referred to, or hereinafter incurred pursuant to the terms of this agreement and/or the Trust herein referred to.

#### Waiver of Defenses in Foreclosure.

It is understood that, one of the principal considerations moving to the Bank in this agreement is the willingness of the other parties hereto to waive any and all defenses they may claim to have to the foreclosure of the security held by the Bank, other than as to the correct amount claimed to be due the Bank. It is, therefore, expressly agreed that, provided the debt be then due, as provided for herein, in any foreclosure proceeding brought pursuant to



the terms of said Declaration of Trust, and/or this agreement, no defense thereto will be made, other than to determine the correct amount remaining due and unpaid from the Bankrupt to the Bank, at the time of said foreclosure. And it is expressly agreed that the parties hereto will not seek to enjoin or delay such foreclosure, if and when brought by the Bank.

To enable the Trustee, hereinafter appointed, to make the payment of taxes, assessments, interest and principal herein provided to be made at the time herein specified, and to do all other things herein agreed to be done, it is understood and agreed that the Trustee may negotiate for the immediate sale of certain parcels of real property now held in said Trust, and described in a Schedule annexed hereto, marked Exhibit "A", and hereby referred to and made a part hereof.

All properties not described in said Exhibit "A" shall be retained in said Trust and be leased or sold [80] on terms and conditions satisfactory to the Bank and the Trustee in Bankruptcy, and shall be subject to the approval of the Bankruptcy Court.

Any and all sales of said real property described in Exhibit "A" shall be on terms and conditions satisfactory to the Bank and the Trustee in Bankruptcy, and shall be subject to the approval of the Bankruptcy Court.

All contracts for the sale of said property shall be issued by the Bank. All payments for any of the Trust property shall be made to the Bank.

**Release Price Agreed Upon.**

In this connection, the Bank agrees, provided no default exists which has not been cured within sixty (60) days, as Provided for Herein, to convey the above described parcels of said property to such purchaser or purchasers as the Trustee in Bankruptcy may direct, when there shall have been paid to the Bank, as release prices thereon, the amount of money agreed upon by the parties hereto, and set forth in Exhibit "A" attached hereto; provided, however, that where the Bank shall have executed and delivered a contract of sale for any part or portion of said property to any third party, no release, transfer or conveyance thereof shall be demanded for said property other than to the Buyer thereof under said contract, so long as said sales contract remains outstanding.

**Release Price Credited Only on Principal.**

All sums received on the release price of said property shall be credited upon only the principal of the Bankrupt's obligations to the Bank; it being expressly agreed that all payments of interest, taxes and assessments and further Trust Advances and expenses, except as hereinafter provided, shall be made by the Trustee in Bankruptcy from funds otherwise in the Bankrupt's estate, or from funds, if any, in the hands of [81] the Bank, as Trustee, as hereinafter provided.

**Distribution of Proceeds from Sales.**

Out of the first money paid to the Bank, on any sale of said Trust Properties, there shall first be

paid all costs of sale, including commissions and Title Charges, not to exceed, however, twenty per cent. (20%) of the sale price of said property.

#### The Speical Fund

All moneys thereafter received on said sales contracts shall be placed by the Bank in a special fund until the amount of the principal remaining due on said sales contract equals the amount of the release price agreed upon for the parcel of property so sold.

Thereafter all such payments, shall be applied upon the principal of the indebtedness owing to the Bank of the Bankrupt until the release price has been fully paid.

All interest on any contract or Trust Deed note shall, when received, be placed by the Bank in the Special Fund.

#### Disbursement of the Special Fund

Out of the Special Fund, the Bank shall pay all taxes, assessments, insurance, interest and other charges and expenses of said Trust No. D7224 not theretofore paid by the Trustee in Bankruptcy. After payment out of said Special Fund of all current interest, taxes, assessments and Trust Expense, and after first setting aside in said Special Fund a reserve sufficient to pay all interest, taxes, assessments and Trust Expenses for one additional year, the remainder of the money in said Special Account shall be paid over to the Trustee in Bankruptcy.

### Use of Paper to meet Quotas on Principal

Although installment payments on the principal of the Bankrupt's agreed obligations have been hereinabove provided to be made on specific dates, it is, nevertheless, understood and agreed that said payments or quotas of the debt will be deemed to have been met, provided [82] that for such portion thereof as shall not have been paid in cash, the Bank shall hold, as trustee of said Trust, Sales Contracts, or First Trust Deeds received from the sale of said real estate sufficient in amount so that the release prices payable thereon shall equal the amount of the unpaid portion of the said principal payments or quotas. The Bank reserves the right to approve or disapprove of said paper for this purpose, but such right shall not be exercised in an arbitrary or unreasonable manner.

Such paper, so approved by the Bank, for said purpose, shall only be available for said purpose so long as it remains in good standing, and without any delinquency in the payments thereon. Should any such paper become delinquent in any respect, the Trustee in Bankruptcy shall have sixty (60) days after notice thereof, to effect a reinstatement thereof or to provide new paper acceptable to the Bank in lieu thereof. Failure to so reinstate said paper or to replace the same, or to pay in cash the amount for which it has been accepted on the quotas, shall constitute a breach of this agreement, entitling the Bank to proceed with the foreclosure

of its security without giving any additional notice of such breach of agreement.

Such paper shall not be accepted by the Bank as payment on said indebtedness, but only as security therefor.

#### Temporary Collection of Rents by Trustee in Bankruptcy

Although the Bank, under the express terms and conditions of said Trust No. D 7224, is entitled to execute all leases for Trust Property, and to demand and receive all rents, issues and profits from the properties held by it in Trust, the Bank agrees that, for a period of one (1) year from the first day of February, [83] 1937, the Receiver, and after his appointment, the Trustee in Bankruptcy, may collect and use all such rents, issues and profits, except the rents, issues and profits from oil, as hereinafter provided, up to a maximum of seven thousand dollars (\$7,000.00). All excesses above said sum to be promptly paid over to the Bank to be applied upon such of the obligations due the Bank by the Bankrupt as the Bank may elect to apply them upon. It is, however, expressly agreed that hereafter all leases and rental agreements shall be made and executed by the Bank, as provided for in said Trust Declaration.

Should there not be paid over to the Trustee in Bankruptcy out of the Special Fund, as hereinabove provided, the sum of \$7,000.00 during the second year, then out of the said rents, issues and



profits from said real property there shall be paid over to said Trustee in Bankruptcy sufficient to equal the said sum of \$7,000.00.

### Oil Income and its Distribution

The right to collect such rents, issues and profits by the Trustee in Bankruptcy, as is provided for herein, shall be expressly subject to the condition that any rents, issues and profits from any of said property for bonuses, rentals, or royalties for or from any oil lease thereon, shall be collected only by the Bank, and shall in no event be paid over to, or collected by said Trustee in Bankruptcy.

All income from oil, in the nature of bonuses, rentals and royalties from any of the properties held by the Bank in Trust, so paid to the Bank, shall be placed by the Bank in a Special Oil Account.

The funds in said Account shall be available to the Trustee in Bankruptcy for the purpose of making up any deficiency in the "Special Fund," to pay interest, taxes, assessments and expenses, as hereinabove provided, in [84] order to obviate a default; provided, however, that all sums taken from said Oil Account for such purpose shall be repaid to said Oil Account from moneys thereafter coming into Special Fund and not needed to pay other or additional interest, taxes, assessments, or expenses then due.

Except as herein provided, all amounts in said account, shall be applied on September first and

March first of each year, or on such other dates as shall be mutually agreed upon by the Trustee in Bankruptcy and the Bank, on the principal of said indebtedness, and shall be considered as cash applied on the quotas of principal as hereinbefore set forth.

The said Declaration of Trust provides that the Bank may pay, purchase, contract or compromise any claims, liens, or incumbrances which in its judgment appear to effect said property or the Trust.

#### Payment of Claims Against Harbor Property

Pursuant thereto, it is understood and agreed that the Bank may in its discretion, purchase, settle, or compromise, the claim of any and all third persons claiming an interest in or to the Long Beach Harbor Tract, lying on Channel No. 3 of the Long Beach Harbor, or in or to any proceeds from the sales thereof, and to that end may make all necessary advances to accomplish said purposes, and all such advances shall become a part of the principal of the Bankrupt's indebtedness and shall bear interest at the rate of four per cent. (4%) per annum. It is understood that the claims referred to arise out of a certain contract or agreement known as the Syndicate No. 1 Agreement between F. P. Newport and certain third parties who furnished a portion of the purchase price of said property. [85]

## No Dividends to General Creditors Pending Sale of Trust Property

Since it is contended by the Bank that the security held by it is insufficient to pay the Bankrupt's obligations, and that it will, therefore, probably become an unsecured creditor for a substantial deficiency, it is expressly agreed that no liquidating dividends shall be paid to the creditors of said Bankrupt Estate until all of the Security held by the Bank shall have been sold, and the amount of such deficiency shall be ascertained, to the end that the Bank may participate in such dividends, if any. Provided, however, that nothing herein contained shall be deemed to prevent the Trustee in Bankruptcy from paying such amounts as may be necessary to clear the title to any property not covered by the trust.

Upon the execution of this agreement by the Trustee in Bankruptcy, all defaults existing shall be deemed to have been waived by the Bank.

## Overlapping Quotas to Apply

Should payments in excess of any one quota of principal be made prior to the due date thereof, such excess payments shall be construed as applying on the next maturing quota of principal.

Notwithstanding anything to the contrary herein provided, it is agreed that, upon any default occurring, and which shall not be cured within sixty (60) days from date of notice as hereinabove provided, no further or additional money in any fund

or funds held by the Bank shall be paid out of the Trust by the Bank, but all such sums of money held in any such fund shall be applied by the Bank, at its option, on any indebtedness then due the Bank.

Notwithstanding anything hereinabove to the contrary, the Bank agrees to advance and pay, prior to delinquency, the second installment of taxes for the year 1936-37 on [86] the property held by it in said Trust No. D7224. All money so advanced shall draw interest at the rate of 4% per annum, payable quarterly, and if not so paid shall bear like interest as the principal of said advances.

Such advances shall be repaid to the Bank out of any money held by it in the "Special Fund", provided such fund shall have in it at all times sufficient money to assure the payment of the installment of interest falling on August 1, 1937.

It is agreed, however, that if there is sufficient money in the "Special Fund" to pay said taxes, and to assure the payment of the installment of interest falling due on August 1, 1937, then the Bank shall be under no obligation to advance and pay said taxes.

The terms and conditions of the above-mentioned Declaration of Trust No. D7224 shall be and they hereby are modified to conform to the terms and conditions hereof.

Other than as modified hereby, the terms and conditions of said Declaration of Trust shall be and they hereby are re-affirmed, ratified and approved.

This agreement shall be executed by the parties hereto, and immediatly upon the appointment of a Trustee in Bankruptcy for said Bankrupt, and his due qualification, and upon the Bankruptcy Court approving this agreement, and authorizing him to execute the same as such Trustee, he shall sign and deliver to the Bank an executed copy thereof, and thereupon he shall, as such Trustee, be bound by the terms and conditions thereof.

This Agreement, in so far as the Receiver in Bankruptcy is concerned, is subject to the approval of the [87] Bankruptcy Court.

In Witness Whereof, the parties hereto have hereunto set their hands and seals the day and year first hereinabove written.

(Seal)      **F. P. NEWPORT CORPORATION,**  
                 LTD.

By F. P. NEWPORT  
                 President

By J. B. GRIBBLE  
                 Secretary

                 H. F. METCALF

                 As Receiver for F. P. Newport  
                 Corporation, an Alleged Bank-  
                 rupt

(Seal)      **SECURITY-FIRST NATIONAL**  
                 **BANK OF LOS ANGELES**

By J. E. HATCH  
                 Vice-President

By RANDALL BOYD

                 Asst. Secretary [88]



## EXHIBIT "A"

PARCELS AND RELEASE PRICES THEREON REFERRED TO  
IN THE FOREGOING AGREEMENT

Parcel No. 1.	Lots 204-205 Tract No. 250.....	Release Price \$ 65,000.00
Parcel No. 2.	Lot 3 Verdugo Estates, Plus portions of Tract 7146 and Blocks 25 and 26, Selvas de Verdugo .....	" " 45,000.00
Parcel No. 3.	Remaining portion of Tract 250, plus Block 22 of Selvas de Verdugo .....	" " 40,000.00
Parcel No. 4.	All of the remaining subdivided lots in the Verdugo area, to- gether with Block 23 & 24 Selvas de Verdugo and the por- tion of the Theodore Verdugo Allotment .....	" " 130,000.00
Parcel No. 5.	San Fernando Ranch Property —Lot 24, Tract 1,000.....	" " 36,500.00
Parcel No. 6.	Lot 23, Tract 1,000.....	" " 32,500.00
Parcel No. 7.	Lot 2, Tract 1,000 and Lots 1 and 2, Tract 1335.....	" " 55,000.00
Parcel No. 8.	Lots 4 & 5, Tract 1336.....	" " 45,000.00
Parcel No. 9.	Lots 6 & 7, Tract 1336.....	" " 45,000.00
Parcel No. 10.	Following Miscellaneous Prop- erties:	One Release Price 15,000.00
	A. Unsold Lots in La Cresenta Oaks	
	B. Unsold parcels in Richland Farms	
	C. Two houses, at 118 Windsor Road and 2866 Canada Blvd., both in Glendale.	

J. E. HATCH

R.B.

F. P. NEWPORT

J. B. GRIBBLE [89]

## SUPPLEMENTAL AGREEMENT

This Agreement, made and entered into this 31st day of August, 1937, by and between F. P. Newport Corporation, Ltd., a Delaware Corporation, with its principal place of business in the City of Los Angeles, State of California, hereinafter called the Bankrupt, H. F. Metcalf, as Trustee in Bankruptcy for the Estate of F. P. Newport Corporation, Ltd., a Bankrupt, and Security-First National Bank of Los Angeles, a National Banking Association, with its principal place of business in the City of Los Angeles, State of California, hereinafter called the Bank,

Witnesseth:

Recitals:

Under date of January 12, 1937, the Bankrupt, the Bank, and the then Receiver in Bankruptcy, H. F. Metcalf, entered into an agreement, providing certain terms and conditions under which the properties of the Bankrupt, held by the Bank, as security for the indebtedness of the Bankrupt, might be sold, and providing therein for the reduction in amount of the Bank's indebtedness, and other matters. Reference is hereby made to said agreement for the complete terms and conditions thereof.

The said Trustee in Bankruptcy, upon his appointment, petitioned the Bankruptcy Court to approve the contract and to authorize the same to be signed by him.

The said Bankruptcy Court has approved said contract, and authorized said Trustee to execute the same, conditioned upon certain modifications, hereinafter set forth, being made thereto. All the parties are willing to modify said contract in said particulars, hence this Agreement.

No interest on the sum of \$1,270,451.12, agreed to be accepted by the Bank under the Contract of January 12, 1937, has been paid since February 1, 1937. The Bank has advanced, since said date, to-wit: on the 16th day of April, 1937, the sum of \$9,120.06 for taxes on the property held by it in said [90] Trust No. D 7224, as security for its indebtedness.

The Agreement:

Interest to be added to principal up to August 1st.

It is agreed that interest on said principal sum of \$1,270,451.12, as provided in said agreement, up to August 1, 1937, together with the sum of \$9,120.06 advanced for taxes on April 16, 1937, with interest thereon at 4% per annum from the date of such advance, to August 1, 1937, shall be added to the said sum of \$1,270,451.12, and thereafter bear the same interest as said sum. It is agreed that the said sum, augmented by said above mentioned amounts, is as of August 1, 1937, the sum of \$1,304,918.77. Said sum shall bear interest at the rate of 4% per annum from August 1, 1937, payable as follows:

Interest payment extended.

The first installment of said interest thereon shall be paid on or before March 7, 1938. Thereafter said interest shall be paid quarterly from March 7, 1938. If any installment of interest be not so paid, it shall bear like interest as the principal.

Principal payments extended.

The principal of the Bank's indebtedness, in the agreed amount of \$1,304,918.77, shall be payable on the dates hereinafter specified, instead of on the dates specified in the said contract of January 12, 1937, and shall be paid as follows:

1. \$35,000.00 on or before March 7, 1938
2. \$65,000.00 on or before September 7, 1938
3. \$250,000.00 on or before September 7, 1939
4. \$150,000.00 on or before March 7, 1940
5. The balance of all indebtedness on or before September 7, 1940.

Repayment of taxes from special fund.

Such additional sums of money as the Bank, at its election, may advance after August 1, 1937, to pay taxes, assessments and improvement bonds against the property held by it in said Trust D 7224, as security for said indebtedness, as provided in said Declaration of Trust, together with interest thereon from [91] the date of such advance, at the rate of 4% per annum, compounded quarterly, shall be repaid to the Bank out of any money held by it in the "Special Fund" provided such fund shall have in it at all times sufficient money to assure the

payment of the installment of interest falling due on March 7, 1938.

Provided the other parties hereto shall have complied with all of the other terms and conditions of said Declaration of Trust D 7224, and the said Agreement of January 12, 1937, as modified by this Agreement, the Bank agrees that the failure of the Bankrupt or the Trustee in Bankruptcy to pay the installment of taxes for the fiscal year 1937-38, falling due in December of 1937, on the properties held by the Bank in said Trust D 7224, or should the Bank advance the money to pay such taxes, the failure to repay the same out of the "Special Fund" shall not constitute such default as to warrant immediate foreclosure of the said Declaration of Trust, and the failure to pay, or to repay the Bank, if the Bank shall advance them, the January installment of principal and interest on Improvement Bonds, a lien against any of the property held by the Bank in said Trust D 7224, shall not constitute such default as to warrant immediate foreclosure of said Declaration of Trust. And the Bankrupt, or the Trustee in Bankruptcy, shall not be called upon to pay said Tax and bond liens, or to repay the same to the Bank should it advance them, with interest as hereinabove provided, prior to the seventh day of March, 1938.

Receipts from Sales and Rentals to pass through hands of Trustee in Bankruptcy.

While the said Declaration of Trust No. 7224, and the contract of January 12, 1937, provide expressly that all moneys from Sales and Leases of Property



in said Trust, shall be paid to and be received by the Bank, it is, nevertheless, agreed, pursuant to the Order of said Bankruptcy Court, that such payments shall pass through the hands of the Trustee in Bankruptcy, and be paid to said Trustee in Bankruptcy, and shall be by him forthwith paid over in full to the Bank to be distributed in accordance with the terms of the said Trust No. D 7224, and the [92] agreement of January 12, 1937, as modified hereby.

It is expressly understood and agreed that any such funds so passing through the hands of the Trustee in Bankruptcy, except as hereinafter provided, shall, while in his possession, be impressed by the lien of the Declaration of Trust securing the indebtedness owing to the Bank. Such funds shall be deposited by the Trustee in Bankruptcy in a separate fund, and not commingled with any other funds in the Bankrupt Estate, and shall be deemed earmarked for application on the Bank's indebtedness, and, except as in said agreement of January 12, 1937, provided, shall not become any part of the general assets of the Bankrupt Estate, nor charged with the payment of any of the expenses of administering said Bankrupt Estate, and nothing herein contained shall prevent the Court from fixing fees on the basis of all money passing through the hands of the Trustee.

No Modification of \$7,000 Income Provision.

Nothing herein contained, however, shall modify or change the provisions of said contract of January 12, 1937, under the heading of temporary col-

lection of rents by the Trustee in Bankruptcy, by the terms of which certain rentals up to a maximum of \$7,000.00 for a limited period, are to be retained by the Trustee in Bankruptcy.

As provided for in said Agreement of January 12, 1937, it is agreed that all sales or leases of property shall be made by the Bank and the Trustee in Bankruptcy, subject to the approval of the Bankruptcy Court.

Referring to the second paragraph, on page seven of said Agreement of January 12, 1937, entitled "Release Prices Credited Only on Principal", it is understood and agreed that the Trustee in Bankruptcy shall not be required, except by an order of this court, to make any payments to the Bank out of funds derived from properties not held by the Bank under its said Trust.

Other than as expressly modified by the terms of this [93] Agreement, the said Agreement of January 12, 1937, shall remain in full force and effect, and is hereby ratified and confirmed.

Contract as Modified Affirmed.

Hubert F. Laugharn was appointed Trustee in Bankruptcy by the Referee in Bankruptcy, and the District Judge made an order vacating said appointment, and adjudging that H. F. Metcalf had been elected Trustee, from which latter order an appeal to the United States Circuit Court of Appeals of the Ninth Circuit is now pending. Said Hubert F. Laugharn petitioned the Court for instructions as to whether or not he should sign the said contract and be bound thereby in the event of

a decision confirming his appointment as Trustee and reversing the order of the District Judge, and the Court has instructed him to so sign and be so bound.

Therefore, said Hubert F. Laugharn, by his signing this agreement, becomes bound by all of the terms and conditions thereof, should he become Trustee of said Bankrupt Estate.

This contract shall be binding upon the parties hereto, their successors and assigns.

In Witness Whereof, the parties hereto have hereunto set their hands and seals, the day and year first hereinabove written.

(Corporate

Seal) F. P. NEWPORT CORPORATION, LTD.

By F. P. NEWPORT

President

By J. B. GRIBBLE

Secretary

H. F. METCALF

Trustee in Bankruptcy for  
the Creditors of F. P. New-  
port Corporation, Ltd., a cor-  
poration, Bankrupt.

(Seal) SECURITY-FIRST NATIONAL  
BANK OF LOS ANGELES

RTA By V. O. WROOLIE

Vice-president

By RANDALL BOYD

Assistant Secretary

HUBERT F. LAUGHARN. [94]

## “EXHIBIT B”

[Title of District Court and Cause.]

STIPULATION RE MODIFICATION OF CONTRACT OR AGREEMENT OF JANUARY 12, 1937.

It Is Hereby Stipulated and Agreed by and between the undersigned that that certain contract or agreement dated the 12th day of January, 1937, made and entered into by and between F. P. Newport Corporation, Ltd., a Delaware corporation, bankrupt, H. F. Metcalf as Receiver for said F. P. Newport Corporation, Ltd., and Security-First National Bank of Los Angeles, a national banking association, (copy of which contract or agreement is attached to, marked Exhibit “A”, and made part of the Findings and Order made and signed by the Honorable Ernest R. Utley, Referee in Bankruptcy herein, on the 13th day of August, 1937) may be and is hereby modified in the following respects and particulars only, to wit:

(1) That certain paragraph appearing on page 6 of said contract or agreement (pages 6 and 7 of said Exhibit “A”), reading as follows:

All properties not described in said Exhibit “A” shall be retained in said Trust and be leased or sold on terms and conditions satisfactory to the Bank and the Trustee in Bankruptcy, and shall be subject to the approval of the Bankruptcy Court.

Is Hereby Changed, Altered and Modified to Read As Follows:

All properties not described in said Exhibit "A" shall be retained in said Trust and be leased or sold on terms and conditions subject to the approval of the Bankruptcy Court. For the purposes of this agreement it is understood that no release prices are fixed on properties not described in said Exhibit "A".

(2) That certain paragraph appearing on page 6 of said contract or agreement (page 7 of said Exhibit "A") reading as follows: [95]

Any and all sales of said real property described in Exhibit "A" shall be on terms and conditions satisfactory to the Bank and the Trustee in Bankruptcy and shall be subject to the approval of the Bankruptcy Court.

Is Hereby Changed, Altered and Modified to Read As Follows:

Any and all sales of said real property described in Exhibit "A" shall be on terms and conditions satisfactory to and shall be subject to the approval of the Bankruptcy Court.

Dated this 14th day of October, 1937.

(Corporate

Seal)

F. P. NEWPORT CORPORATION, LTD.

By F. P. NEWPORT

President,

By J. B. GRIBBLE

Secretary



(Corporate

Seal)

SECURITY-FIRST NATIONAL  
BANK OF LOS ANGELES

By C. W. CRAIG

Vice President

By RANDALL BOYD

Assistant Secretary

H. F. METCALF

As Trustee in Bankruptcy of  
F. P. Newport Corporation,  
Ltd. (H. F. Metcalf)

HUBERT F. LAUGHARN

L. M. CAHILL

Counsel for F. P. Newport  
Corporation, Ltd.

W. C. SHELTON,

GEORGE BURCH, JR., and

EARL E. MOSS

By W. C. SHELTON

Counsel for said Security-  
First National Bank of Los  
Angeles

ROBERT B. POWELL

Counsel for Hubert F. Laugh-  
arn

BAILIE, TURNER & LAKE

By NORMAN A. BAILIE

Counsel for H. F. Metcalf,  
Trustee.

Approved this 14th day of October, 1937.

PAUL J. McCORMICK

United States District Judge.

[96]

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EXHIBIT "C"

[Title of District Court and Cause.]

STIPULATION RE MODIFICATION OF SUPPLEMENTAL AGREEMENT DATED  
AUGUST 31, 1937

It Is Hereby Stipulated and Agreed by and between the undersigned that that certain "Supplemental Agreement" dated the 31st day of August, 1937, and made and entered into by and between F. P. Newport Corporation, Ltd., a Delaware Corporation, Bankrupt, H. F. Metcalf, as Trustee in Bankruptcy for the Estate of F. P. Newport Corporation, Ltd., a Bankrupt, and Security-First National Bank of Los Angeles, a National Banking Association, (copy of which "Supplemental Agreement" is attached to, marked Exhibit "C" and made a part of the Findings and Order made and signed by the Honorable Ernest R. Utley, Referee in Bankruptcy herein, on the 13th day of August, 1937), may be and is hereby modified in the following respects and particulars only, to wit:

Those certain paragraphs appearing on pages 3 and 4 of said "Supplemental Agreement" and reading as follows:

“While the said Declaration of Trust No. 7224, and the contract of January 12, 1937, provide expressly that all moneys from Sales and Leases of Property in said Trust, shall be paid to and be received by the Bank, it is, nevertheless, agreed, pursuant to the Order of said Bankruptcy Court, that such payments shall pass through the hands of the Trustee in Bankruptcy, and be paid to said Trustee in Bankruptcy, and shall be by him forthwith paid over in full to the Bank to be distributed in accordance with the terms of the said Trust No. D 7224, and the agreement of January 12, 1937, as modified hereby.

“It is expressly understood and agreed that any such funds so passing through the hands of the Trustee in Bankruptcy, except as hereinafter provided, shall, while in his possession, be impressed by the lien of [97] the Declaration of Trust securing the indebtedness owing to the Bank. Such funds shall be deposited by the Trustee in Bankruptcy in a separate fund, and not commingled with any other funds in the Bankrupt Estate, and shall be deemed earmarked for application on the Bank’s indebtedness, and, except as in said agreement of January 12, 1937, provided, shall not become any part of the general assets of the Bankrupt Estate, nor charged with the payment of any of the expenses of administering said Bankrupt Estate, and nothing herein contained shall pre-

vent the Court from fixing fees on the basis of all money passing through the hands of the Trustee.”

Are Hereby Changed, Altered and Modified to Read as Follows:

“While the said Declaration of Trust No. D 7224 and the contract of January 12, 1937, provide expressly that all moneys from Sales and Leases of Property in said Trust shall be paid to and be received by the Bank, it is, nevertheless, agreed, in order to comply with the bankruptcy law requiring that all bankruptcy funds be accounted for by the Trustee and be disbursed by him only upon checks or warrants countersigned by the Referee, that all such moneys shall be paid to said Trustee in Bankruptcy, and, until the indebtedness due the Bank has been paid, shall be by him forthwith paid over in full to the Bank, to be distributed in accordance with the terms of said Trust No. D 7224 and the agreement of January 12, 1937, as modified hereby.

“Recognizing that the Bank has a prior right to the moneys in the preceding paragraph mentioned until the indebtedness due it has been paid, it is therefore expressly understood and agreed that such funds or moneys so paid to and received by the said Trustee in Bankruptcy from Sales or Leases or other disposition of property under said Trust shall, until the indebtedness due the Bank has been paid and

except as hereinafter provided, be, while in his possession, impressed with the lien of the Declaration of Trust securing the indebtedness owing to the Bank, and such funds or moneys shall be deposited by the Trustee in Bankruptcy in a separate bank account and not commingled with any other funds of the Bankrupt Estate, and shall be deemed earmarked for application on the Bank's indebtedness as provided in said agreement of January 12, 1937, and this supplement thereto, and except as in said agreement and said supplement provided, shall not, until the indebtedness due the Bank has been paid, become any part of the general assets of the Bankrupt Estate. No provision of said agreement of January 12, 1937, or this supplement thereto is made or entered into, directly or indirectly, for the purpose of fixing the amount of the fees or other compensation to be paid to any party in interest or any attorneys of any party in interest in this bankruptcy proceeding, for services rendered in connection therewith or otherwise, and the fixing and determination of any fees or compensation to be paid to anyone whomsoever from the assets of this Bankrupt Estate, is, in accordance with the law, left entirely to the determination of the [98] court having jurisdiction of this bankruptcy proceeding, unaffected by any provision, term or condition, express or implied, of said contract of January 12, 1937, or of this supplement thereto."



Dated this ..... day of October, 1937.

(Corporate Seal)

F. P. NEWPORT CORPORA-  
TION, LTD.

By F. P. NEWPORT  
President

By J. B. GRIBBLE  
Secretary

(Corporate Seal)

SECURITY-FIRST NATIONAL  
BANK OF LOS ANGELES

By L. W. CRAIG  
Vice President

By R. T. ADAMS  
Assistant Secretary

H. F. METCALF

As Trustee in Bankruptcy of  
F. P. Newport Corporation,  
Ltd.

HUBERT F. LAUGHARN

L. M. CAHILL

Counsel for F. P. Newport  
Corporation, Ltd.

W. C. SHELTON, GEORGE  
BURCH, JR. and EARL E.  
MOSS

By W. C. SHELTON

Counsel for Security-First Na-  
tional Bank of Los Angeles

ROBERT B. POWELL

Counsel for Hubert F. Laugharn

BAILIE, TURNER & LAKE

By NORMAN A. BAILIE

Counsel for H. F. Metcalf,

Trustee in Bankruptcy

Approved this 29th day of October, 1937.

PAUL J. McCORMICK

United States District Judge.

[Endorsed]: Filed Dec. 31, 1940. Ernest R. Utley,  
Referee. Filed Nov. 28, 1941. R. S. Zimmerman,  
Clerk. [99]

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[Title of District Court and Cause.]

FIRST REPORT AND ACCOUNT CURRENT  
OF H. F. METCALF, TRUSTEE IN BANK-  
RUPTCY HEREIN.

Comes now your petitioner, H. F. Metcalf, and respectfully represents unto the Court:

1. That heretofore and on March 18, 1937, your petitioner was by order of the above entitled District Court appointed Trustee in Bankruptcy herein; that thereafter on March 19, 1937, he duly qualified as such Trustee and now is the duly appointed, qualified and acting Trustee in Bankruptcy herein.

2. That an appeal was taken by certain creditors from the order so appointing your petitioner as Trustee to the United States Circuit Court, Ninth

Circuit, and thereafter said order appointing your petitioner as Trustee was duly affirmed by said Circuit Court.

3. That prior to the adjudicating in bankruptcy herein, your petitioner was Receiver in Bankruptcy of this estate; that as such Receiver he entered into a certain agreement with Security-First National Bank of Los Angeles wherein it was provided, in substance, for liquidation of certain properties held by said Bank under its trust No. D-7224.

4. That upon appointment and qualification of your petitioner as such Trustee he filed with this court a petition for an order authorizing him as such Trustee to approve and be bound by the terms of the said agreement with said Bank; that said petition came on regularly for hearing before this Court pursuant to notice to creditors as required by law and was partially heard on April 19, 1937.

5. That thereafter, pursuant to leave of Court, petitioner [101] filed an amendment to his petition and the matter again came on regularly for hearing on June 7, 1937, whereupon evidence was introduced and the matter was continued to June 18, 1937.

6. That in the interim the parties to the said agreement entered into a modification thereof in certain respects; that thereafter on August 13, 1937, the Referee duly made and signed his findings of fact and order approving the said agreement as modified and authorizing and directing your petitioner as such Trustee to approve and execute said

agreement as modified. Reference is hereby made to said findings and order, agreement and modification for further particulars.

7. That thereafter a review of said findings and order was taken by certain creditors. That on November 5, 1937, said findings and order were approved and confirmed by the District Court as modified by certain stipulations dated October 14, 1937, and October 29, 1937, both of which were approved by the Court and are on file in the office of the Clerk of said District Court. Reference is hereby made to said documents for further particulars.

8. That thereafter an appeal from the order of the District Court so approving and confirming the said findings and order of the Referee was allowed to certain creditors. That said matter is now pending in the United States Circuit Court of Appeals, Ninth Circuit, proceeding numbered 8703 in the office of the Clerk of said Circuit Court.

9. That in the order allowing said appeal (8703) the said United States Circuit Court provided that, pending the determination thereof, your petitioner as such Trustee might, on terms and conditions approved by the Bankruptcy Court, sell or lease for oil well drilling or any other purpose property involved in the agreement hereinbefore mentioned, and provided for the impounding of funds derived therefrom. Reference is hereby made to a certified copy of said order on file with this Court for further particulars. [102]

10. That certain of the property held by Security-First National Bank of Los Angeles under its trust No. D-7224 is situate in what is believed to be a proven oil field and was believed to be of considerable value as potential oil property. That after several months of negotiations an oil and gas lease was entered into by and between your petitioner as said Trustee and said Security-First National Bank of Los Angeles and said Bankrupt, as Lessors, and Universal Consolidated Oil Company, as Lessee, which provided for the development of oil and gas and other hydrocarbon substances believed to underlie some of the properties held by said Bank under its said trust.

11. That your petitioner filed a verified petition for an order authorizing, approving and confirming said lease. That thereafter upon proceedings duly had before the Court, pursuant to notice duly given as required by law, an order was made and signed by the Referee authorizing, approving and confirming said lease. Reference is hereby made to said order for further particulars.

12. That pursuant to the terms of said lease the Lessee went into possession of the property covered thereby and is now in the process of drilling a well on the premises and endeavoring to obtain permits from the City of Long Beach for the drilling of additional wells thereon.

13. That there has been paid to your petitioner as Trustee, pursuant to the terms of said lease, the sum of \$25,000.00 in cash and that said sum has



been deposited with Security-First National Bank of Los Angeles in a special account in the name of your petitioner as such Trustee.

14. That your petitioner has been informed that the City of Long Beach and the State of California claim or assert that some portions of the property covered by the said oil and gas lease are tidelands and that by reason thereof said City of Long Beach and said State of California assert some right, title and interest in or [103] to portions of said property. That said asserted claims have made it exceedingly difficult for the Lessee to obtain the necessary permits for the drilling of the wells. That in order to have the matter determined judicially your petitioner filed a petition to quiet his title to the whole of said property against any claim so asserted by City of Long Beach and its officers or the State of California and its officers. That an order to show cause has been issued directed to said municipality and its officers and to the said State and its officers; that service of said order to show cause has been made; that a partial hearing has been had before the Court; that the matter is now pending and undetermined. Reference is hereby made to the petition and order to show cause on file herein for further particulars.

15. That upon the appointment and qualification of your petitioner as such Trustee he duly filed his return showing no exempt property; that your petitioner mailed to the Commissioner of Internal Revenue a notice of the adjudication in bankruptcy of

said corporation; that your petitioner recorded in the various counties where said corporation has real property certified copies of the order approving his bond as such Trustee; that your petitioner obtained a bar order in re taxes; and that your petitioner reviewed and made a general study of all of the properties of the bankrupt.

16. That upon application of your petitioner an order was made herein authorizing the employment of Messrs. Bailie, Turner & Lake as his counsel; that said counsel have attended to numerous legal matters in this estate.

17. That upon application of your petitioner orders were made herein authorizing him to employ Mr. F. P. Newport, the former President of the bankrupt corporation, as an assistant in and about the management of the affairs of this estate at a salary of \$250.00 per month, and to employ Mr. J. B. Gribble as bookkeeper and accountant at a salary of \$150.00 per month. [104]

18. That several hearings have been had on the application of Eugene Kelly, Esq. for leave to sell certain real property of this estate under execution on the ground that a judgment, of which Eugene Kelly is assignee, is a lien upon said property and was such a lien thereon for more than four months prior to the filing of the petition herein; that the matter has been continued from time to time and is still pending and undetermined. Reference is hereby made to the documents on file herein for further particulars.

19. That Addie E. Hurlburt Garland heretofore obtained an order authorizing the foreclosure of a mortgage on certain property held by the **bankrupt** estate; that petitioner has not been served in any such action.

20. That several easements for the construction of power lines, flood water controls, and sewer systems have been granted, pursuant to authority of this Court, as will more fully appear by reference to the pleadings on file herein.

21. That portions of the property in San Fernando Valley have been leased for agricultural purposes as will more fully appear by reference to petitions and orders in relation thereto on file herein.

22. That certain improved property of this estate has been rented on a month to month basis and that certain property at the harbor has been let for use as a boat landing.

23. That an order has been made by the Court authorizing Bank of America, a national trust and savings association, to foreclose a mortgage on certain property of this estate; that no sale of said property has been had; reference is hereby made to the pleadings on file herein for further particulars.

24. That among the assets of said estate are certain scattered lots in the Wilmington area which could not, because of their size and location, be drilled upon for the production of oil. That by leave of this Court your petitioner entered into certain [105] community oil and gas leases with Bank Line Oil Company; that some income has been and is

being derived therefrom as will hereinafter appear. Reference is hereby made to the petitions and orders on file herein for further particulars.

25. That pursuant to leave of Court, your petitioner has sold certain personal property of this estate as will more fully appear by reference to the returns of sale on file herein.

26. That pursuant to an order of court certain outstanding beneficial interests in Title Guarantee and Trust Company's trust No. P-1512 were purchased and the said trust was terminated and the property therein transferred and conveyed to the Security-First National Bank of Los Angeles under its trust D-7224. Reference is hereby made to the petitions and order on file herein for further particulars.

27. That at the date of the filing of the petition in bankruptcy herein said Security-First National Bank of Los Angeles had on hand in a release fund provided for under the terms of its trust D-7224 a balance in excess of the sum of \$765.80. That thereafter said Bank transferred from said released fund the sum of \$765.80 and applied the same towards the payment of interest or advances made by it as hereinafter set forth.

28. That pursuant to an order of this Court petitioner was substituted as a party defendant in that certain action brought in the superior court of the State of California in and for the County of Los Angeles by the California Improvement Bond Co. against F. P. Newport Corporation, Ltd., et



al., which action was for the foreclosure of certain street bonds against the property described in the complaint on file in said action, which property belonged to said bankrupt; that said bonds had been in default for some time; that petitioner made earnest effort to arrange for funds to pay off said bonds but was unable to do so in view of the fact that the property was also covered by a mortgage; that recently a judgment [106] for foreclosure of said bonds was entered in said action; that the total amount is \$4346.85 plus costs of \$32.70.

The foregoing is a brief resume of some of the proceedings had in the matter of this estate and is not intended to be a detailed statement of all of the work done by your petitioner or his counsel or of the legal proceedings had herein.

That at the time of the appointment and qualification of your petitioner as such Trustee there was transferred to his account, as such Trustee a balance of \$373.50 theretofore in his possession as Receiver. Reference is hereby made to the final account of the Receiver on file herein.

That upon the appointment and qualification of your petitioner as such Trustee there was delivered to him by Hubert F. Laugharn the sum of \$556.30 which represented the balance of funds in his possession for the brief period he acted as Trustee herein. Reference is hereby made to the report of said Hubert F. Laugharn on file herein.

That there is attached hereto, marked Exhibit A hereby referred to and made part hereof, a state-



ment of the receipts and disbursements of your petitioner as Trustee covering the period from March 3, 1937, to February 19, 1938, both dates inclusive; that by said statement it appears that your petitioner has received a total of \$8490.99 from the sources shown in said statement; that he has expended a total of \$7,739.35 for the purposes therein set forth; that there is a balance on hand as of February 19, 1938, in the sum of \$751.64.

That the sum of \$435.28 has been received by your petitioner as a balance on a contract for the sale of Lot Twenty, Block Twelve, Long Beach Harbor Tract, Los Angeles County, California, in addition to the receipts shown in said Exhibit A. That an order was made herein directing said sum to be paid by petitioner, less the recordation fees and revenue stamps, to Eugene Kelly and Louise [107] S. Joerg on the grounds that by reason of their respective judgment liens they were entitled to receive the same. Reference is hereby made to the order of court on file herein for further particulars. That petitioner upon payment of said sum executed and delivered a Trustee's deed to said property to George H. Beilfuss, in pursuance of an order of this Court. That pursuant to an order of this Court the said sum of \$435.28 was deposited in a special account and was disbursed as set forth in Exhibit B hereto attached, hereby referred to and made part hereof.

That Security-First National Bank of Los Angeles has advanced on behalf of your petitioner as

such Trustee and for the purpose of paying for the beneficial interests in Title Guarantee and Trust Company's trust P-1512 hereinbefore referred to, and for the payment of taxes and assessments against the property held by said Bank under its trust D-7224, a total of \$57,691.31 which has been added to the principal of the indebtedness due it, all of which is secured by its said trust D-7224; that an itemized statement of the advances so made is attached hereto marked Exhibit C hereby referred to and made part hereof.

That pursuant to an order of court on file herein, reference to which is hereby made for further particulars, certain royalties payable under community oil and gas leases with the Bank Line Oil Company and accruing on account of properties, title to which is held by said Bank under its trust D-7224, were paid to said Bank. That said Bank has received on account of such royalties the sum of \$1,993.99, and on account of the condemnation of a portion of Lot Seventy-Five, Tract 1473, the sum of \$195.00 for a flood control channel; that said Bank now has on hand in a special account \$2,188.99, all as more fully set forth in Exhibit D attached hereto, hereby referred to and made part hereof.

That out of the \$25,000.00 deposited in a special account with Security-First National Bank of Los Angeles, as hereinbefore [108] mentioned, and pursuant to an order of Court, your petitioner has paid to said Bank the sum of \$10,050.01 to satisfy the second half of the 1937-38 taxes assessed against

certain properties described in his petition filed herein on March 14, 1938. Reference is hereby made to said petition and order for further particulars.

Wherefore petitioner prays that a time and place be designated by this Court for the hearing of the foregoing report and account; that notice thereof be given as required by law; that, upon the hearing, an order be made herein ratifying, approving and confirming said report and account; and for such other and further relief as may be proper.

H. F. METCALF

Petitioner-Trustee in Bankruptcy.

BAILIE, TURNER & LAKE

By ALLEN T. LYNCH

Attorneys for said Trustee. [109]

## EXHIBIT A

H. F. METCALF

Trustee in Bankruptcy

F. P. Newport Corporation, Ltd., Bankrupt

## STATEMENT OF RECEIPTS AND DISBURSEMENTS

March 3, 1937, to February 19, 1938, Inclusive

Cash Balance Forward From Receiver, as per his Report.....	\$ 373.50
Cash Balance from H. F. Laugharn, Trustee, as per his Report	556.30

## Receipts

## Rentals

Verdugo Park—Misc. Organizations—

Sundry dates .....\$1,700.51

Houses—118 W. Windsor Road—3/1/37 - 3/1/38 300.00

2866 Canada Blvd.,—6/1/37 - 7/1/37..... 33.75

—8/16/37 - 12/1/37... 148.75

Waterfront—Small Building—10/6/36 - 10/31/37 160.00

—Boat Landing—5/1/37 - 5/1/38..... 1,140.00

—5/8/37 - 5/8/38..... 1,140.00

## Ranch Leases and Rentals

House—7/1/37 - 3/1/38 ..... 120.00

Barn Space—Misc. .... 40.84

Leases—1/1/37 - 12/31/37 ..... 715.00

—2/1/38 - 12/31/38 ..... 135.00

Miscellaneous Rentals—Ice Cream Location..... 2.50

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Total Rentals Collected.....\$5,636.35

Refund of Street Improvement Bond Interest..... 61.17

Interest Collections ..... 27.61

Contracts Receivable ..... 248.64

Tax Collections ..... 16.45

Oil Rents and Royalties..... 1,320.97

Sale of Equipment..... 250.00

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Total Receipts ..... 7,561.19

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Total Balance Forward and Receipts..... \$8,490.99

## Disbursements

Telephone—Office and Verdugo Woodlands.....	\$	590.35	
Water, Electricity & Gas—Verdugo Park and Adobe .....		91.68	
Property Upkeep Expense			
Park—Supplies .....		64.58	
—Labor—Clean-up .....		369.49	
Ranch—Labor .....		13.00	
—Expense .....		153.36	
Canada Boulevard House—Labor & Expense.....		21.87	
Windsor Road House—Labor & Expense.....		19.98	
Office Expense—Supplies, Stamps, etc.....		193.53	
Rent—Office .....		800.00	
Footings Forward .....	\$	2,317.84	\$8,490.99

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Footings Forward From Previous Page.....	\$8,490.99
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## Disbursements (continued)

Footings forward from previous page.....	\$2,317.84
Pay-roll—Stenographer—special—time to time.....	37.51
—Bookkeeper—3/15/37 - 2/19/38 .....	1,670.62
F. P. Newport—Services per Court Order	
3/15/37 - 2/19/38 .....	2,784.36
—Automobile mileage for inspection of properties .....	450.00
Trustee's Bond .....	40.00
Reporter and Court Fees.....	154.47
Advertising .....	40.38
Social Security Tax.....	84.50
Street Improvement Bonds—Principal.....	80.68
—Interest .....	66.49
Moving Furniture from Harbor Office.....	12.50
	<hr/>
Total Disbursements .....	7,739.35
	<hr/>
Balance on Hand February 19, 1938.....	\$ 751.64
	<hr/> <hr/>

[111]



## EXHIBIT B

H. F. METCALF

Trustee in Bankruptcy

F. P. Newport Corporation, Ltd., Bankrupt

STATEMENT OF RECEIPTS AND DISBURSEMENTS  
SPECIAL ACCOUNT CITIZENS NATIONAL TRUST  
& SAVINGS BANK

September 3, 1937, to December 20, 1937, Inclusive

## Receipts

September 3, 1937—Deposit arising from tender of payment on Lot 20, Block 12, Long Beach Harbor Tract..... \$ 435.28

## Disbursements

Per Court Order of December 8, 1938

Recording Fees and Revenue Stamps.....\$ 4.00

Eugene Kelly—a/c Bennett Judgment..... 215.64

Louise S. Joerg and James T. Boyle, her Attorney

—a/c Joerg Judgment..... 215.64

**Total Disbursements** ..... \$ 435.28

[112]

EXHIBIT C

H. F. METCALF

Trustee in Bankruptcy

F. P. Newport Corporation, Ltd., Bankrupt

STATEMENT OF RECEIPTS AND DISBURSEMENTS  
THROUGH SECURITY FIRST NATIONAL BANK TRUST D-7224

March 3, 1937, to December 31, 1937, Inclusive

Receipts

Advanced in behalf of H. F. Metcalf as Trustee, and the Bankrupt Estate, by Trust Department of Security First National Bank, in payment of Sundry Accounts.....	\$57,691.31
Transferred from Release Fund at Security First National Bank .....	765.80
Total Advanced and Transferred.....	<u>\$58,457.11</u>

Disbursed by Security First National Bank as Follows:

Street Improvement Bonds—Principal .....	\$ 4,780.81
—Interest .....	475.82
Taxes .....	19,239.57
Purchase of Beneficial Interests in Trust P 1512 at Title Guarantee and Trust Company, to clear title of outside interests in Waterfront property .....	33,195.11
Interest paid Security First National Bank, on account of Advances.....	765.80
Total Disbursements .....	<u>\$58,457.11</u>

## EXHIBIT D

H. F. METCALF

Trustee in Bankruptcy

F. P. Newport Corporation, Ltd., Bankrupt

## STATEMENT OF FUND BALANCES

HELD IN TRUST D-7224, SECURITY FIRST NATIONAL BANK

as at December 31, 1937

## Special Oil Account

From Bankline Oil Company for Royalties and Rentals on  
lots in Tract 2016, Dominguez Harbor Tract, and Long  
Beach Harbor Tracts.....\$1,993.99

## Special Fund

Cash received for portion of Lot 75, Tract 1473 for use of  
land for Flood Control Channel..... 195.00

Total of Special Funds on Deposit.....\$2,188.99

(Verified)

[Endorsed]: Filed Mar 29 1938 Ernest R. Utley,  
Referee. Filed Nov. 28 1941 R. S. Zimmerman,  
Clerk. [114]

[Title of District Court and Cause.]

SECOND REPORT AND ACCOUNT CURRENT  
OF H. F. METCALF, TRUSTEE IN BANK-  
RUPTCY HEREIN.

Comes now your petitioner, H. F. Metcalf, and  
respectfully represents unto the Court:

1. That on March 18, 1937, the petitioner was  
by order of the District Court duly appointed Trus-  
tee in Bankruptcy herein; that thereafter on March  
19, 1937, he duly qualified as such Trustee and ever

since has been and now is the duly appointed, qualified and acting Trustee herein.

2. That on or about March 29, 1938, your petitioner as such Trustee duly filed with this Court his first report and account current; that thereafter said first report and account current was duly approved by said Court.

3. That your petitioner hereby renders his Second Report and Account Current covering the period commencing with February 19, 1938, and ending October 31, 1938.

4. That since the filing of the said first account the appeal referred to therein as pending in the United States Circuit Court of Appeals, Ninth Circuit, case No. 8703, has been determined and the decision of the lower court has been duly affirmed and the mandate of said Circuit Court has been duly spread upon the minutes of the above entitled District Court.

5. That under the oil and gas lease referred to in said first account and report, the Universal Consolidated Oil Company, a corporation, as Lessee, has drilled on the premises covered by said lease 4 wells; that all of said wells are presently producing oil and gas; that said Lessee is in the process of drilling 1 [115] additional well on said leased premises.

6. That a hearing was had before Honorable Ernest R. Utley, Referee in Bankruptcy on the Trustee's petition to quiet title and on the order to show cause directed to State of California and City

of Long Beach, more particularly referred to in said petition and on the objections to the jurisdiction of the Referee made by respondents, which objections were overruled. That respondents took a review thereof to the District Court of the United States, Southern District of California, Central Division; that said District Court affirmed the ruling and order of the Referee. That an appeal was taken to the United States Circuit Court, Ninth Circuit where the matter is now pending; that said appeal is No. 8966 in the office of the Clerk of said Circuit Court.

7. That portions of the property in this estate are situate in San Fernando Valley, which portions have been leased for agricultural purposes, as will more fully appear by reference to petitions and orders on file herein. That certain improved property of this estate has been rented on a month to month basis; and that a portion of said property has been rented for use as a boat landing.

8. That from scattered lots, which are not under the Declaration of Trust No. D-7224 in Security-First National Bank of Los Angeles, certain income has been received from community oil and gas leases, all as more particularly reflected in Exhibit "A" hereto attached, hereby referred to and made part hereof.

9. That in order to procure necessary permits for drilling additional wells on the property leased to Universal Consolidated Oil Company certain agreements were made and entered into with City of Long Beach, full particulars of which are set



forth in the Trustee's petition on file herein and order thereon made by this Court; reference is hereby made to said petition and order for further particulars.

10. That a large income has been received from oil produced [116] and saved from the premises let to said Universal Consolidated Oil Company, which income has been deposited in a special account carried in the name of said Trustee in Bankruptcy with Security-First National Bank of Los Angeles, Sixth and Spring Streets Branch.

11. That said Trustee has made two sales of real property for a total sum of \$5500.00, as will more fully appear from the petitions and orders on file herein.

12. That there is attached hereto, marked Exhibit "A" hereby referred to and made a part hereof, a statement of the receipts and disbursements of said Trustee covering the period from February 19, 1938, to and including October 31, 1938. That on pages marked A (1) and (2) of said Exhibit it appears that the Trustee received from the sources therein indicated the sum of \$8,884.64, which added to the amount on hand of \$751.64 totals \$9,636.28; that by the said pages it appears that said Trustee disbursed for the purposes therein noted the sum of \$9,010.03, leaving a balance on hand in the general fund in the sum of \$626.25. That on page marked A (3) it appears that the Trustee received under the Universal Consolidated Oil Company lease a total of \$183,068.60 and disbursed therefrom for the purposes noted \$10,701.39, leaving a balance

on hand in the special account of \$172,367.21. That on page marked A (4) appears a statement of moneys paid direct to Security-First National Bank of Los Angeles under the community oil lease and from the bond refund and payment made to said Bank by said Trustee for and on account of the release price of sale of real estate made by said Trustee, together with a statement of charges paid by said Bank out of said funds, leaving a balance of \$3,533.16 in the hands of said Bank for application on indebtedness owing it. That the total receipts of your Trustee, including money paid direct to said Security-First National Bank of Los Angeles since his appointment and qualification as Trustee, have amounted to \$205,092.16.

13. That no compensation has been allowed to or paid to [117] said Trustee.

Wherefore your petitioner prays: That a time and place be designated by this Court for the hearing of the foregoing Second Report and Account Current; that notice of such hearing be given as required by law; that upon the hearing an order be made herein ratifying, approving and confirming the said Second Report and Account; that an allowance of \$2500.00 be made to your petitioner as Trustee on account of his compensation; and for such other and further relief as may be proper.

H. F. METCALF

Petitioner-Trustee

BAILIE, TURNER & LAKE

By ALLEN T. LYNCH

Attorneys for said Trustee. [118]

EXHIBIT A

H. F. METCALF

Trustee in Bankruptcy

F. P. Newport Corporation, Ltd., Bankrupt

STATEMENT OF RECEIPTS AND DISBURSEMENTS

February 20, 1938, to October 31, 1938

Cash Balance Forwarded From Report February 19, 1938..... \$ 751.64

Receipts

Rentals

Verdugo Park—Misc. Organizations—

Sundry Dates .....\$ 1,204.50

Houses—118 W. Windsor Road 3/1/38 - 11/1/38 200.00

—2866 Canada Blvd.—12/1/37 - 5/1/38..... 219.00

Waterfront—small building 10/31/37 - 10/31/38 150.00

Boat Landing—5/1/38 - 10/1/38..... 500.00

—5/7/38 - 10/7/38..... 400.00

Ranch Leases and Rentals

House—3/1/38 - 10/15/38 ..... 145.00

Barn Space—Miscellaneous ..... 70.00

Leases—Farming Operations ..... 1,005.00

60 Acre Parcel

Farming Operations ..... 300.00

Rotary Mud Deposits..... 298.48

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Total Rentals Collected.....\$4,491.98

Refund of Street Improvement Bond Interest..... 54.55

Interest Collections ..... 25.00

Ranch Equipment Sold..... 45.00

Oil Royalties—Harbor District Lots..... 718.11

Notes Receivable ..... 50.00

Real Estate Sales..... 3,500.00

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Total Receipts ..... 8,884.64

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Total Balance Forward and Receipts..... \$9,636.28

## Disbursements

Telephone—Office and Verdugo Woodlands.....	\$	421.74	
Water, Electricity & Gas—Verdugo Park and Adobe .....		87.01	
Property Upkeep Expense			
Park—Supplies .....		75.85	
—Labor—Clean-up .....		481.40	
Ranch—Labor .....		59.15	
—Expense .....		70.26	
Canada Boulevard House—Labor and Expense.....		77.01	
Windsor Road House, Labor & Expense.....		6.90	
Office Expense—Supplies, Stamps, etc.....		99.53	
Rent—Office to January 1, 1938.....		240.00	
Pay-roll—Stenographer—special—time to time.....		4.17	
—Bookkeeper—2/29/38 - 10/31/38 .....		1,225.14	
F. P. Newport—Services—2/19/38 - 11/30/38.....		2,289.39	
—Automobile mileage for inspection of properties .....		390.30	
Footings Forward .....	\$5,527.85		\$9,636.28

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## Exhibit A (2)

Footings Forward From Previous Page.....		\$9,636.28
Disbursements (Continued)		
Footings forward from previous page.....	\$5,527.85	
Trustees Bond .....	40.00	
Reporter and Court Expense.....	124.06	
Appellee's Brief and Costs—Neblett Matter.....	57.57	
For sale signs.....	60.00	
Social Security Tax.....	75.76	
Ranch Equipment .....	114.99	
Release—Real Estate—Bank Trust.....	2,800.00	
Commission on sale of Real Estate.....	175.00	
Title Expense—Sale of Real Estate.....	34.80	
Total Disbursements .....		9,010.03
Balance on Hand October 31, 1938.....	\$	626.25

[120]

## Exhibit A (3)

H. F. METCALF

Trustee in Bankruptcy

F. P. Newport Corporation, Ltd., Bankrupt

## STATEMENT OF RECEIPTS AND DISBURSEMENTS

## SPECIAL OIL ACCOUNT

## SECURITY-FIRST NATIONAL BANK OF LOS ANGELES

February 10, 1938, to October 31, 1938, Inclusive

## Receipts

Cash Bonus on Lease.....	\$ 25,000.00
Cash Bonus out of Oil.....	25,000.00
Royalties Received .....	133,068.60
Total Receipts .....	<u>\$183,068.60</u>

## Disbursements

Taxes Paid .....	\$10,634.77
Street Improvement Bond Principal and Interest .....	66.62
Total Disbursements .....	<u>10,701.39</u>
Balance in Bank October 31, 1938.....	<u>\$172,367.21</u>

[121]



## Exhibit A (4)

H. F. METCALF  
Trustee in Bankruptcy

F. P. Newport Corporation, Ltd., Bankrupt

STATEMENT OF RECEIPTS AND DISBURSEMENTS  
THROUGH SECURITY FIRST NATIONAL BANK TRUST D-7224

## Receipts

Oil Royalties on Harbor Lots.....	\$2,014.89
Refund of Bond Penalty.....	8.77
Sale Lots 12 & 13, Block B, Fernbrook Place Tract.....	2,800.00
Total Receipts .....	<u>\$4,823.66</u>

## Disbursements

Tax Paid on Solvent Credits.....	\$ 2.87
Oilfield Testing & Engineering Co., Inc.....	1,253.23
Filing Tax Claims for Refund.....	34.40
Total Disbursements .....	<u>1,290.50</u>
Excess Receipts Over Disbursements for Application on Previous Advances.....	<u><u>\$3,533.16</u></u>

(Verified)

[Endorsed]: Filed Dec 8 1938 Ernest R. Utley,  
Referee. Filed Nov 28 1941. R. S. Zimmerman,  
Clerk [122]

[Title of District Court and Cause.]

SUPPLEMENT TO SECOND REPORT AND  
ACCOUNT CURRENT OF H. F. METCALF,  
TRUSTEE HEREIN.

Comes now your petitioner H. F. Metcalf and respectfully represents unto the Court:

1. That on Decmeber 8, 1938, petitioner as Trustee in Bankruptcy of this estate filed herein his Second Report and Account Current. That said Trustee herewith presents and files this supplement to said Second Report and Account Current covering the period from October 31, 1938, to and including December 21, 1938.

2. That there is attached hereto, marked Exhibit A, hereby referred to and made part hereof a statement of the receipts and disbursements of said Trustee covering the period from October 31, 1938, to and including December 21, 1938. That said Exhibit A does not include receipts from oil royalties paid pursuant to lease made and entered into with Universal Consolidated Oil Company, nor receipts received by Security-First National Bank of Los Angeles direct under the terms of the community oil and gas lease made and entered into with Bankline Oil Company covering property the legal title to which is held by said Bank under its trust D-7224.

3. That there is attached hereto, marked Exhibit B, hereby referred to and made a part hereof, a statement of oil royalties received during said period from October 31, 1938, to December 21, 1938, inclusive, under the said lease with Universal

Consolidated Oil Company and deposited in the special account carried by said Trustee with the Security-First National Bank of Los Angeles, Sixth and Spring Streets, Los Angeles, California, together with a statement of disbursements made from said fund. It will be observed that there [123] has been paid from said account the sum of \$170,000.00 which payment was made to said Bank and applied by it in accordance with an order made by this Court under date of December 6, 1938. Reference is hereby made to said order for further particulars.

4. That there is attached hereto, marked Exhibit C hereby referred to and made a part hereof, a statement of moneys received by said Bank during the period of October 31, 1938, to December 21, 1938, inclusive, for and on account of oil royalties paid under the terms of the community oil and gas lease, hereinbefore mentioned, to the said Bank together with a statement of disbursements and charges against the said fund.

5. That pursuant to the terms and provisions of those certain contracts made and entered into with the City of Long Beach and heretofore approved by this Court, (reference is hereby made to said order and copies of said contracts on file with this Court), there has been deposited with the Bank of America National Trust & Savings Association, 4th and Pine Branch, Long Beach, California, the sum of \$8994.23. That said funds and such additional funds as may be from time to time deposited therein are to be held until the title to

certain property is determined whereupon they will be disbursed in accordance with said contracts.

6. That since the filing of the Trustee's Second Report and Account Current counsel for said Trustee have been served with a petition for writ of certiorari and brief in support thereof filed by McAdoo & Neblett and Wm. H. Neblett, to the Supreme Court of the United States. That said petitioners seek to have said Court review a decision of the Circuit Court of Appeals of the United States for the Ninth Circuit reported under the title of *In Re F. P. Newport Corporation, Ltd. McAdoo & Neblett, et al., vs. F. P. Newport Corporation, Ltd., et al*, 98 Fed. (2) 453. Counsel for said Trustee are preparing a brief in reply to the brief filed in support of said petition by petitioners. [124]

7. That since the filing of said Second Account and Report, counsel for said Trustee have prepared and filed an answer to a brief by City of Long Beach, et al. pertaining to the appeal referred to in paragraph 6 of the said Second Report and Account.

Wherefore petitioner prays: That his Second Report and Account Current and this supplement thereto be approved and that said Trustee have the relief prayed for in said Second Report and Account Current; and for such other and further relief as may be proper.

H. F. METCALF

Petitioner-Trustee

BAILIE, TURNER & LAKE

By ALLEN T. LYNCH

Counsel for said Trustee. [125]

## EXHIBIT A

H. F. METCALF

Trustee in Bankruptcy

F. P. Newport Corporation, Ltd., Bankrupt

## STATEMENT OF RECEIPTS AND DISBURSEMENTS

November 1, 1938 to December 21, 1938, Inclusive

Cash Balance Forwarded From Report October 31, 1938..... \$ 626.25

## Receipts

## Rentals

Verdugo Park—Misc. Organizations—

Sundry Dates .....\$ 11.00

Houses—118 W. Windsor Road—11/1/38 - 1/1/39 50.00

Waterfront—Boat Landing—10/1/38 - 12/1/38..... 200.00

—10/7/38 - 12/7/38..... 100.00

Ranch Leases and Rentals—

House—10/15/38 - 12/15/38 ..... 50.00

Barn Space—Miscellaneous ..... 25.00

Leases—Farming Operations ..... 212.50

60 Acre Parcel—Rotary Mud Deposits..... 128.50

Oil Royalties—Harbor District Lots..... 119.71

Real Estate Sales..... 2,000.00

On Account Compromise Claim from Bullis Estate 2,000.00

Taxes Refunded ..... 15.08

Total Receipts ..... 4,911.79

Total Balance Forward and Receipts..... \$5,538.04

## Disbursements

Telephone—Office and Verdugo Woodlands..... 92.29

Water, Electricity &amp; Gas—Verdugo Park and Adobe 17.29

## Property Upkeep Expense

Park Supplies ..... 2.35

—Labor ..... 61.25

Ranch—Expense ..... 27.81

Lot Clean-up ..... 73.50

Canada Boulevard House—Labor..... 10.50

Windsor Road House—Labor..... 1.75



Office Expense—Supplies, stamps, etc.....	6.61
Rent—Office—1/1/38 - 12/31/38 .....	960.00
Pay Roll—Bookkeeper 11/1/38 - 12/17/38.....	274.71
F. P. Newport—Services—12/1/38 - 1/21/39.....	433.11
—Automobile mileage for inspection of properties...	140.00
Tract Office Sign Permit.....	10.00
Taxes—L. A. County—Lot 1, Block 3, Verdugo.....	26.44
Release—Real Estate—Bank Trust .....	1,600.00
Commission on sale of real estate.....	100.00
Title Expense—sale of real estate.....	39.30
<hr/>	
Total Disbursements .....	3,876.91
<hr/>	
Balance on Hand December 21, 1938.....	\$1,661.13
<hr/>	
[126]	

## EXHIBIT B

H. F. METCALF

Trustee in Bankruptcy

F. P. Newport Corporation, Ltd., Bankrupt

## STATEMENT OF RECEIPTS AND DISBURSEMENTS

## SPECIAL OIL ACCOUNT

## SECURITY-FIRST NATIONAL BANK OF LOS ANGELES

November 1, 1938, to December 21, 1938, Inclusive

Cash Balance Forwarded From Report October 31, 1938..... \$172,367.21

## Receipts

Royalties Received ..... 37,193.51

Total Balance Forward and Receipts..... \$209,560.72

## Disbursements

## Taxes

1938 Mineral Rights..... \$ 1,067.44

First half 1938-39 on property..... 9,923.27

## Street Improvement Bonds

Principal ..... 1,700.62

Interest ..... 61.02

## Security-First National Bank

Apply on Interest.....\$70,755.60

Advances ..... 9,832.55

Interest on Advances 1,820.02

Principal ..... 87,591.83

170,000.00

Total Disbursements ..... 182,752.35

Balance on Hand December 21, 1938..... \$ 26,808.37

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EXHIBIT C

H. F. METCALF

Trustee in Bankruptcy

F. P. Newport Corporation, Ltd., Bankrupt

STATEMENT OF RECEIPTS AND DISBURSEMENTS

THROUGH SECURITY-FIRST NATIONAL BANK TRUST D-7224

November 1, 1938, to December 21, 1938, Inclusive

Receipts

Oil Royalties on Harbor Lots.....	\$ 226.79
Execution Agreements—City of Long Beach.....	2.00
Sale Lot 1, Block 3, Selvas de Verdugo.....	1,600.00
Total Receipts .....	<u>\$1,828.79</u>

Disbursements

Oilfield Testing & Engineering Co., Inc.....	300.00
Excess Receipts Over Disbursements.....	<u><u>\$1,528.79</u></u>

Note: Figure of \$3,533.16, shown on previous Statement, Exhibit A3, is not a cash balance, but is the total amount received in excess of disbursements, during the period covered thereby, and said sum of \$3,533.16 has been applied against previous advances.

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## EXHIBIT D

H. F. METCALF

Trustee in Bankruptcy

F. P. Newport Corporation, Ltd., Bankrupt

STATEMENT OF IMPOUNDED ROYALTY FUNDS  
BANK OF AMERICA—FOURTH AND PINE AVENUE,  
LONG BEACH

November 1, 1938, to December 21, 1938, Inclusive

## Deposits

Deposited by Universal Consolidated Oil Company, as per agreement with City of Long Beach, for pro-rata production of oil, gas and sundry products, from oil lease of portion of Rancho Los Cerritos, known as Lots 18, 20 and 21, Recorder's Filed Maps, #365, for assessment purposes only .....\$8,994.23

Of this amount, provided it is determined that the City of Long Beach has no interest in the aforementioned property, there will be delivered to the Trustee, less deductions for any expense properly chargeable to the Trustee.....\$7,051.28

(Verified)

[Endorsed]: Filed Dec 22 1938 Ernest R. Utley,  
Referee. Filed Nov 28 1941. R. S. Zimmerman,  
Clerk. [129]

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[Title of District Court and Cause.]

THIRD REPORT AND ACCOUNT CURRENT  
OF H. F. METCALF, TRUSTEE IN BANK-  
RUPTCY HEREIN.

Comes now your petitioner, H. F. Metcalf, and respectfully represents to the Court:

1. That on March 18, 1937, the petitioner was by order of the District Court duly appointed Trustee in Bankruptcy herein; that thereafter on March 19, 1937, he duly qualified as such Trustee and ever since has been and now is the duly appointed, qualified and acting Trustee herein.

2. That heretofore and on or about March 29, 1938, your petitioner as such Trustee duly filed with this Court his first report and account current, and that thereafter said report and account was duly approved by this Court; that subsequently on or about December 8, 1938, he filed his second report and account current, and on December 22, 1938, a supplement thereto, and that said second report and account current and supplement were thereafter duly approved by this Court.

3. That your petitioner hereby renders his third report and account current covering the period from December 21, 1938, to September 30, 1939, inclusive, the second account current and supplement thereto having covered the period from February 19, 1938, to and including December 21, 1938.

4. That under the oil and gas lease referred to in the second report and account current, the Universal Consolidated Oil Company, a corporation, as Lessee, has drilled on the premises covered by said lease a total of nine wells; that all of said wells [130] are presently producing oil and gas.

5. That the decision of the District Court overruling objections to the jurisdiction of the Referee in the matter of the hearing of the petition of the



Trustee to quiet title to the property covered by the oil and gas lease against certain claims asserted by the City of Long Beach has been affirmed by the United States Circuit Court, Ninth Circuit, and a petition for writ of certiorari has been filed by the City of Long Beach with the United States Supreme Court and said petition is now pending and as yet undetermined by the United States Supreme Court.

6. That portions of the property in this estate which are situate in San Fernando Valley have been leased for agricultural purposes, as will more fully appear by reference to petitions and orders on file herein; that there has been certain income from the rental of the picnic grounds situate in what is commonly known and referred to as Verdugo Park, and a portion of the property has been rented for use as a boat landing; that certain improved property has been rented on a month to month basis; and that the Trustee is receiving certain income from the deposit of rotary mud on a portion of the bankrupt estate's premises; this deposit of mud is being made in a ravine or gully and will be of considerable assistance in leveling off the property.

7. That during the period covered by this report \$792.83 has been paid direct to Security-First National Bank of Los Angeles as and for oil royalties payable under the terms of the community oil and gas lease made and entered into with the Bankline Oil Company, and covering certain scattered lots in the Harbor District; that reference is hereby made to the petition and order on file authorizing

the execution of such community oil and gas lease for further particulars.

8. That the Trustee has sold four parcels of real property, all as will more particularly appear from petitions and [131] orders on file herein, for a total of \$13,000.00, and has made and entered into a certain contract of sale with Richard A. Horsch and Ida Mae Horsch for the sale of certain real property to said Richard A. Horsch and Ida Mae Horsch for the sum of \$1250.00, payable \$300.00 cash and the balance at the rate of \$25.00 or more per month, reference being hereby made to the petition and order on file for further particulars; that additional sales totaling \$7,700.00 have been authorized and approved and confirmed by the Court, but the purchase price has not yet been paid and the matters are still pending in escrow; that the Trustee made and entered into an agreement to sell certain of the property of this estate to one Marshall Adams Smith for a total of \$16,000.00, the agreement being conditioned, however, upon the property affected by said sale being rezoned for business purposes; that the rezoning has not yet been accomplished, consequently the sale has not been consummated. Reference is hereby made to the petition and order on file for full particulars.

9. That there is attached hereto marked Exhibit A, and hereby made a part hereof, a statement of the receipts and disbursements of the Trustee for said period from December 21, 1938, to September 30, 1939, inclusive. That included in the receipts

are deposits on account of sales of real estate in the sum of \$950.00. This represents deposits made by purchasers on sales authorized but not yet fully consummated. That in addition to the disbursements reflected on said Exhibit A the Trustee has incurred additional liabilities which have not yet been paid, as follows:

Glendale Star, advertising	\$ 841.08
Glendale News Press, advertising	202.00
Unpaid office rent	400.00
<hr/>	
Total	\$1443.08

The advertising referred to represents advertising inserted in said newspapers for the purpose of stimulating sales of the properties in the Verdugo Woodlands area, and in addition to the unpaid advertising [132] the Trustee has paid for such advertising \$883.92, as appears from said Exhibit A.

10. That there is attached hereto, marked Exhibit B and hereby made a part hereof, a statement showing the payments made to Security-First National Bank of Los Angeles pursuant to the terms of the agreement made and entered into by and between said bank and the Trustee in Bankruptcy, and dated January 12, 1937, as supplemented and modified and heretofore approved by the Court. The payments reflected in this statement are made out of the oil royalties received under the Universal Consolidated Oil Company lease and deposited in a special account in the Trustee's name and carried with said Security-First National Bank of Los An-

geles. Said statement further reflects payments made for advances made by said bank, fees for executing documents, interest, taxes and street bonds. There has been paid to said bank during said period, as reflected on said statement, for application on the principal of the indebtedness owing said bank, \$138,208.17, and interest on the principal of said indebtedness in the sum of \$35,805.37. The total royalties received under the Universal Consolidated Oil Company lease for the period covered by this report amounted to \$160,527.11, which added to the cash balance in said special account as of December 21, 1938, made a total of \$187,335.48.

11. That there is attached hereto, marked Exhibit C, hereby referred to and made a part hereof, a statement showing the advances made by the Security-First National Bank of Los Angeles in order to pay Oilfield Testing & Engineering Co., Inc. for services rendered in reporting on the operations of the lessee under the oil and gas lease hereinbefore mentioned, and receipts by said bank direct from oil royalties under the Bankline Oil Company lease hereinbefore mentioned, and principal and interest paid under the Horsch contract of sale hereinbefore mentioned; that the excess of the disbursements over the receipts reflected by said statement is paid [133] by the Trustee from time to time out of the oil royalty receipts deposited in the Trustee's special account and reflected in Exhibit B.

12. That there is attached hereto, marked Exhibit D, and hereby made a part hereof, a statement reflecting the monies impounded with Bank



of America National Trust & Savings Association, Fourth and Pine Avenue, Long Beach, California, pursuant to the terms of the agreement made and entered into by and between Universal Consolidated Oil Company, the Trustee, the bankrupt, Security-First National Bank of Los Angeles, and the City of Long Beach, a copy of which agreement is on file with this Court, reference being hereby made to the same for further particulars and to the order of the Court approving said agreement.

13. That your petitioner is not requesting any allowance on account of his commissions at this time, but reserves the right to file a petition at a future time for allowance on account of such commissions.

Wherefore, your petitioner prays that a time and place be designated by this Court for the hearing of the foregoing Third Report and Account Current; that notice of such hearing be given as required by law, and that upon the hearing an order be made ratifying, approving and confirming said Third Report and Account; and for such other and further relief as may be proper.

H. F. METCALF

As Trustee in Bankruptcy of F.  
P. Newport Corporation, Ltd.,  
a corporation, Bankrupt.

Petitioner.

BAILIE, TURNER & LAKE

By ALLEN T. LYNCH

Attorneys for said Trustee. [134]



## EXHIBIT A

H. F. METCALF

Trustee in Bankruptcy

F. P. Newport Corporation, Ltd., Bankrupt

## STATEMENT OF RECEIPTS AND DISBURSEMENTS

December 21, 1938, to September 30, 1939, Inclusive

Cash Balance Forwarded From Report December 21, 1938..... \$ 1,661.13

## Receipts

## Rentals

Verdugo Park—Misc. Organizations—

Sundry Dates .....\$ 1,397.00

Houses—118 W. Windsor Road—

1/1/39 - 4/1/39 75.00

—2866 Canada Blvd.—3/1/39 - 10/1/39 236.25

Waterfront—Boat Landing—12/1/38 - 10/1/39 900.00

—12/7/38 - 10/7/39 450.00

—Small Building—10/31/38 - 8/31/39 125.00

## Ranch Leases and Rentals

House—12/15/38 - 3/8/39 ..... 55.00

Barn Space—Miscellaneous ..... 50.00

Leases—Farming Operations ..... 1,538.75

60 Acre Parcel—Rotary Mud Deposits..... 1,106.70

—Farming Operations ..... 620.00

Real Estate Sales..... 13,250.00

Refund of Street Improvement Bond Interest..... 29.25

Refund of Taxes..... 2.88

Sale of Leaf Mold..... 12.00

Deposits on Sales of Real Estate..... 950.00

Sale of Tract Office Building..... 75.00

Total Receipts .....	20,872.83
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Total Balance Forward and Receipts.....	\$22,533.96
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## Disbursements

Telephone—Office and Verdugo Woodlands.....	430.11	
Water, Electricity & Gas—		
Verdugo Park and Adobe.....	78.80	
Property Upkeep Expense—		
Park—Labor .....	1,236.59	
—Supplies .....	167.18	
Ranch—Expense .....	93.77	
Lot Clean-up—Labor .....	89.82	
—Supplies .....	1.04	
House—2866 Canada Blvd.—Labor.....	22.95	
—Supplies .....	.79	
—Sewer .....	64.40	
—118. W. Windsor Road—Labor.....	17.50	
—Supplies .....	28.66	
Lot 4, Verdugo Estate—Labor.....	12.25	
Office Expense—Supplies, Stamps, etc.....	103.27	
Rent—Office—1/1/39 - 5/1/39.....	320.00	
Advertising—Verdugo Woodlands Lots for Sale	883.92	
Pay-roll—Bookkeeper—12/17/38 - 9/30/39.....	1,556.79	
Footings Forward .....	\$ 5,107.84	\$22,533.96

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Footings Forward From Previous Page..... \$22,533.96

## Disbursements (continued)

Footings forward from previous page.....	\$ 5,107.84
F. P. Newport—Services—1/21/39 - 10/31/39.....	2,289.39
—Automobile mileage for	
inspection of properties	820.00
Taxes—Lots .....	71.53
—Franchise Tax .....	53.60
—Social Security Tax.....	78.56
Waterfront Rental Adjustment.....	400.00
Insurance—2866 Canada Boulevard.....	22.50
Printing Brief—McAdoo-Neblett Case.....	61.18
Re-zoning Property Expense.....	45.00
Trustees Bond .....	40.00
Stenographic Expense .....	29.11

Title Expense—Sale of Real Estate.....	178.10	
Releases—Real Estate—Bank Trust.....	10,700.00	
Commissions on Sale of Real Estate.....	922.50	
Referee's Indemnity Fees, Court Expenses and Filing Fees .....	385.53	
Court Reporter .....	17.50	
Appraisal Fees .....	74.00	
Notary Fees .....	9.50	
Filing Costs .....	106.00	
		<hr/>
Total Disbursements .....	21,411.84	
		<hr/>
Balance on Hand September 30, 1939.....	\$ 1,122.12	
		<hr/> <hr/>
		[136]

## EXHIBIT B

H. F. METCALF

Trustee in Bankruptcy

F. P. Newport Corporation, Ltd., Bankrupt

STATEMENT OF RECEIPTS AND DISBURSEMENTS

SPECIAL OIL ACCOUNT

SECURITY-FIRST NATIONAL BANK OF LOS ANGELES

December 22, 1938, to September 30, 1939, Inclusive

Cash Balance Forward From Report December 21, 1938.....	\$ 26,808.37
Receipts	
Royalties Received .....	160,527.11
	<hr/>
<b>Total Balance Forward and Receipts.....</b>	<b>\$187,335.48</b>

## Disbursements

Taxes—Second half 1938-39 on real property .....	\$ 9,860.71
—State Oil and Gas Assessment.....	141.66

## Security-First National Bank

Apply on—Interest .....	\$ 35,805.37
—Advances .....	2,527.89
—Int. on Advances ...	13.31
—Bank fees—for executing documents .....	81.50
—Principal .....	138,208.17

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176,636.24

Street Improvement Bonds—Principal.....	5.41
—Interest .....	1.69

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Total Disbursements ..... 186,645.71

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Balance on Hand September 30, 1939..... \$ 689.77

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## EXHIBIT C

H. F. METCALF

Trustee in Bankruptcy

F. P. Newport Corporation, Ltd., Bankrupt

## STATEMENT OF RECEIPTS AND DISBURSEMENTS

THROUGH SECURITY-FIRST NATIONAL BANK TRUST D-7224

December 22, 1938, to September 30, 1939, Inclusive

## Receipts

Oil Royalties on Harbor Lots.....	\$ 792.83
Collections on Contracts Receivable for Sale of Real Estate	
Principal .....	70.25
Interest .....	4.75
	<hr/>
Total Receipts .....	\$ 867.83

## Disbursementts

Oilfield Testing & Engineering Co., Inc.....	3,330.00
	<hr/>
Excess Disbursements Over Receipts—Added to	
Amount Due to Bank in Trust.....	<u><u>\$2,462.17</u></u>

Note: This is not a cash balance but is a total amount advanced by the Bank in excess of receipts from sundry sources during the period covered by this report and has been added to the amount of principal due the Bank.

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## EXHIBIT D

H. F. METCALF

Trustee in Bankruptcy

F. P. Newport Corporation, Ltd., Bankrupt

## STATEMENT OF IMPOUNDED ROYALTY FUNDS

BANK OF AMERICA—FOURTH AND PINE AVENUE—

LONG BEACH

December 22, 1938, to September 30, 1939, Inclusive

## Receipts

Deposited by Universal Consolidated Oil Company, as per Agreement with City of Long Beach, for pro-rata production of oil, gas and sundry products, from oil lease of portion of Rancho Los Cerritos, known as Lots 18, 20 and 21, Recorder's Filed Maps, #365, for Assessment purposes only.

Balance reported to December 21, 1938.....	\$ 8,994.23
Deposited December 22, 1938 to September 30, 1939.....	62,364.96

Total on Deposit September 30, 1939.....	<u>\$71,359.19</u>
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Of this amount, provided it is determined that the City of Long Beach has no interest in the aforementioned property, there will be delivered to the Trustee, less deductions for any expense properly chargeable to the Trustee, as follows:

Balance reported to December 21, 1938.....	\$ 7,051.28
Pro-rata December 22, 1938 to September 30, 1939.....	49,919.82

Total Pro-Rata of Deposit Allocable to Trustee.....	<u>\$56,971.10</u>
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(Verified)

[Endorsed]: Filed Oct 31 1939 Ernest R. Utley,  
Referee. Filed Nov 28 1941. R. S. Zimmerman,  
Clerk [139]

[Title of District Court and Cause.]

PETITION FOR AUTHORIZATION, APPROVAL AND CONFIRMATION OF AN OIL AND GAS LEASE, AND FOR ORDER TO SHOW CAUSE.

To the Honorable District Court of the United States, Southern District of California, Central Division:

The petition of H. F. Metcalf, Trustee in Bankruptcy of the above entitled bankrupt, Security-First National Bank of Los Angeles, a national banking association, and F. P. Newport Corporation, Ltd., Bankrupt, respectfully represents unto the Court:

1. That H. F. Metcalf is, and at all times mentioned herein has been, the duly elected and approved and qualified Trustee in Bankruptcy of the Estate of F. P. Newport Corporation, Ltd., a corporation, Bankrupt.

2. That Security-First National Bank of Los Angeles is, and at all times herein mentioned has been, a national banking association, duly organized and existing under and by virtue of the laws of the United States of America.

3. That F. P. Newport Corporation, Ltd. is, and at all times herein mentioned has been, a corporation.

4. That among the assets of said estate coming into the possession of H. F. Metcalf, as such Trustee, are those certain lots, pieces or parcels of real property in the Rancho Los Cerritos, situate in the

City of Long Beach, County of Los Angeles, State of California, more particularly described as follows:

Parcel 1: Beginning at the most Southwesterly corner of the land described in the deed to the Title Insurance and Trust Company, recorded in Book 5577 Page 105 of Deeds, Records of said County, in the Northwesterly line of [140] Channel No. 3, Long Beach Harbor; thence along said Northwesterly line South  $64^{\circ} 42' 30''$  West 250 feet; thence North  $19^{\circ} 42' 30''$  East 738.08 feet; thence North  $64^{\circ} 42' 30''$  East 250 feet to the most Northwesterly corner of the land described in said deed to the Title Insurance and Trust Company; thence along the Northwesterly line of said land so described, South  $19^{\circ} 42' 30''$  West 738.08 feet to the point of beginning.

Parcel 2: Beginning at the most Southeasterly corner of the land described in the above mentioned deed to the Title Insurance and Trust Company, in the Northwesterly line of Channel No. 3 of Long Beach Harbor; thence along the Southeasterly line of the land described in said deed North  $19^{\circ} 42' 30''$  East 738.08 feet; thence North  $64^{\circ} 42' 30''$  East 500 feet; thence South  $19^{\circ} 42' 30''$  West 738.08 feet to a point in said Northwesterly line of Channel No. 3; thence along said Northwesterly line South  $64^{\circ} 42' 30''$  West 500 feet to the point of beginning.

Note: In Book 1 Page 10 of the County Recorder's Assessment Maps, is the record of a map filed February 9th, 1917, made by the City Engineer of the City of Long Beach for local assessment purposes only, upon which map the above described property is designated as Lots 18, 20 and 21.

Subject to any valid municipal, state and/or federal rights, if any there be, and to conditions, reservations, restrictions, rights and rights of way, if any there be, of record.

5. That Security-First National Bank of Los Angeles, as trustee under a declaration of trust, holds the legal title to said real property as security for an indebtedness in excess of one million dollars owing to it by the bankrupt, said indebtedness being more particularly described in the exhibit attached to the petition of H. F. Metcalf, Trustee in Bankruptcy herein, for an order authorizing him to approve an agreement with Security-First National Bank of Los Angeles and others on file herein, reference to which said exhibit is hereby made for further particulars.

6. That the said real property is located in what is commonly known as the Wilmington-Long Beach oil field, which for some time past has been the scene of intensive oil development. That said real property fronts on what is known as "Channel No. 3" of Long Beach Harbor and consists of two parcels as hereinbefore set forth. That one of said

parcels has a frontage of approximately 250 feet on said "Channel No. 3" and the other parcel has a frontage of approximately [141] 500 feet on said "Channel No. 3."

7. That three distinct oil and gas zones have been discovered in said Wilmington-Long Beach oil field, namely what are commonly known as the "Ranger" zone, the "Terminal" zone, and the "Ford" zone. That the above described real property is now considered proven oil and gas bearing property by reason of the discovery of oil and gas in wells drilled upon other property in the vicinity thereof; that said property is more valuable at the present time for the development and production of oil and gas than for any other purpose, and if not immediately developed, any oil and gas contained therein will to a great extent be drained therefrom by wells drilled or to be drilled on adjacent property.

8. That on account of the proximity of other wells drilled or now drilling close to said real property, it is vitally necessary for the preservation of said estate that your petitioners now enter into a lease with a responsible oil producer for the development and production of the oil and gas believed to underlie said property.

9. That, subject to the authorization, approval and confirmation thereof by this Court, petitioners have entered into a lease with Universal Consolidated Oil Company, a California corporation, a copy of which said lease is attached hereto, marked Exhibit "A" and made a part hereof, the same as if here copied in full.



10. That said lease provides, among other things, for the payment of a bonus of \$25,000.00 payable out of ten per cent (10%) of the gross production first obtained from said real property, and thirty-five per cent (35%) royalty, all as will more fully and accurately appear by the terms of said Exhibit "A", to which reference is hereby made for further particulars.

11. That in addition to the above, said Universal Consolidated Oil Company has agreed to pay and has placed in escrow with Title Guarantee and Trust Company, of Los Angeles, California, [142] the sum of \$25,000.00 as a cash bonus for said lease, which sum is to be paid to said H. F. Metcalf, as Trustee in Bankruptcy herein, subject to the authorization, approval and confirmation of said lease by this Court. That a copy of the escrow instructions accompanying the said deposit of \$25,000.00 are attached hereto, marked Exhibit "B" and made a part hereof, the same as if here copied in full.

12. That your petitioners have made a thorough investigation of said Universal Consolidated Oil Company and they are, and each of them is, satisfied that said Universal Consolidated Oil Company is well able, both from the standpoint of financial ability and practical experience, to carry out the terms of said lease and said escrow. That your petitioners are further satisfied with the reputation of the officers of said Universal Consolidated Oil Company for honesty and integrity.

13. That your petitioners allege that it now appears to be for the best interests of said estate and its creditors and of said bankrupt that said lease be authorized, approved and confirmed by the Court, and that your petitioners be authorized and directed to do all things necessary or proper to be done to carry the same into effect.

14. That your petitioners believe and therefore state that it would not be for the best interests of said estate, its creditors or the bankrupt, to have said lease awarded to the highest bidder at public auction, but that it would be for the best interests of said estate, its creditors, and the bankrupt, to permit any operator who may desire to enter into a lease of said premises on the same form as said Exhibit "A", (exclusive of royalty, bonuses, name of the lessee, and its address), to come into Court and present upon the hearing of this petition any offer in excess of that contained herein and in said Exhibit "A", and at the same time to present to the Court appropriate written evidence of the financial and moral [143] responsibility and practical experience of such operator, in order that said Court may then determine whether said lease should be made to said proposed lessee named therein or to some other operator who may have made a bid therefor.

Wherefore, petitioners pray:

1. That a day may be set for the hearing of this petition;

2. That notice of the time and place of the hearing of this petition be given according to law;

3. That an order to show cause issue requiring all creditors of this estate and all other interested parties to be and appear before this Court at the time set for the hearing of this petition, then and there to show cause if any they have why an order should not be made and entered herein granting this petition and authorizing, approving and confirming the execution of said lease, or some other similar lease which the Court may see fit to authorize;

4. That upon the hearing of this petition and said order to show cause, this Court make and enter its order authorizing, approving and confirming the execution of said lease, or some other similar lease which the Court may see fit to authorize, and authorizing and directing your petitioners to do all things necessary or proper to be done to carry such lease into effect; and

5. For such other and further affirmative equitable relief as may be proper in the premises.

H. F. METCALF

Trustee in Bankruptcy herein.

BAILIE, TURNER & LAKE

By NORMAN A. BAILIE

Counsel for said Trustee in  
Bankruptcy

(Seal)                    SECURITY-FIRST NATIONAL  
                              BANK OF LOS ANGELES

By J. E. HATCH  
                              Vice-President

By R. T. ADAMS  
                              Asst. Secretary  
                              W. C. SHELTON,

O. K.    W. C. S.

GEO. W. BURCH, Jr. and  
EARL MOSS

By W. C. SHELTON  
                              Counsel for said Security-First  
                              National Bank of Los Angeles

(Seal)                    F. P. NEWPORT  
                              CORPORATION, LTD.

By F. P. NEWPORT  
                              President

By J. B. GRIBBLE  
                              Secretary

L. M. CAHILL  
                              Counsel for F. P. Newport Cor-  
                              poration, Ltd. [144]

United States of America  
Southern District of California  
Central Division  
County of Los Angeles—ss.

H. F. Metcalf, being duly sworn, says: That he is one of the petitioners and the Trustee in Bankruptcy in the foregoing entitled proceeding; that he

has read the foregoing Petition for Authorization, Approval, and Confirmation of an Oil and Gas Lease, and for an Order to Show Cause, and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters which are therein stated on his information or belief, and as to those matters that he believes it to be true.

H. F. METCALF

Subscribed and sworn to before me this 14th day of January, 1938.

(Seal)

FLORENCE C. GRANT

Notary Public in and for the County of Los Angeles,  
State of California. [145]

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United States of America  
Southern District of California  
Central Division  
County of Los Angeles—ss.

R. T. Adams being duly sworn, says: That he is an officer, to wit Ass't Secty. of Security-First National Bank of Los Angeles, a national banking association, one of the petitioners in the foregoing entitled proceeding; that he has read the foregoing Petition for Authorization, Approval, and Confirmation of an Oil and Gas Lease, and for an Order to Show Cause, and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters which are therein stated



on his information or belief, and as to those matters that he believes it to be true.

R. T. ADAMS

Subscribed and sworn to before me this 14th day of January, 1938.

(Seal) FLORENCE C. GRANT

Notary Public in and for the County of Los Angeles,  
State of California. [146]

United States of America  
Southern District of California  
Central Division  
County of Los Angeles—ss.

F. P. Newport, being duly sworn, says: That he is an officer, to wit President of F. P. Newport Corporation, Ltd., a corporation, the Bankrupt in the foregoing entitled proceeding; that he has read the foregoing Petition for Authorization, Approval, and Confirmation of an Oil and Gas Lease, and for an Order to Show Cause, and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters which are therein stated on his information or belief, and as to those matters that he believes it to be true.

F. P. NEWPORT

Subscribed and sworn to before me this 14th day of January, 1938.

(Seal) FLORENCE C. GRANT

Notary Public in and for the County of Los Angeles,  
State of California. [147]

EXHIBIT "A"

OIL AND GAS LEASE.

This indenture, Made and entered into this 14th day of January, 1938, by and between Security-First National Bank of Los Angeles, a national banking association, as Trustee under its Trust No. D-7224, F. P. Newport Corporation, Ltd., a corporation, Bankrupt, and the Trustee in Bankruptcy of said F. P. Newport Corporation, Ltd., Bankrupt, Parties of the First Part and Lessors, and Universal Consolidated Oil Company, a California corporation, Party of the Second Part and Lessee,

Witnesseth:

Granting Clause.

That for and in consideration of \$10.00, lawful money of the United States of America, to the Lessors in hand paid, and of other valuable consideration, the receipt of which is hereby acknowledged, and in consideration of the covenants and agreements hereinafter contained by the Lessee to be kept and performed, the Lessors have leased, let and demised, and by these presents do lease, let and demise unto the Lessee, its successors and assigns, those certain lots, pieces or parcels of real property in the Rancho Los Cerritos, situate in the City of Long Beach, County of Los Angeles, State of California, more particularly described as follows:

Parcel 1: Beginning at the most Southwesterly corner of the land described in the

deed to the Title Insurance and Trust Company, recorded in Book 5577 Page 105 of Deeds, Records of said County, in the Northwesterly line of Channel No. 3, Long Beach Harbor; thence along said Northwesterly line South  $64^{\circ} 42' 30''$  West 250 feet; thence North  $19^{\circ} 42' 30''$  East 738.08 feet; thence North  $64^{\circ} 42' 30''$  East 250 feet to the most Northwesterly corner of the land described in said deed to the Title Insurance and Trust Company; thence along the Northwesterly line of said land so described, South  $19^{\circ} 42' 30''$  West 738.08 feet to the point of beginning. [148]

Parcel 2. Beginning at the most Southeasterly corner of the land described in the above mentioned deed to the Title Insurance and Trust Company, in the Northwesterly line of Channel No. 3 of Long Beach Harbor; thence along the Southeasterly line of the land described in said deed North  $19^{\circ} 42' 30''$  East 738.08 feet; thence North  $64^{\circ} 42' 30''$  East 500 feet; thence South  $19^{\circ} 42' 30''$  West 738.08 feet to a point in said Northwesterly line of Channel No. 3; thence along said Northwesterly line South  $64^{\circ} 42' 30''$  West 500 feet to the point of beginning.

Note: In Book 1 Page 10 of the County Recorder's Assessment Maps, is the record of a map filed February 9th, 1917, made by the City Engineer of the City of Long Beach for local assessment purposes only, upon which map

the above described property is designated as Lots 18, 20 and 21.

To have and to hold the same for the purposes and term hereinafter provided therefor, subject to any valid Municipal, State and/or Federal rights, if any there be, and subject also to conditions, reservations, restrictions, rights and rights of way, if any there be, of record, and upon the following covenants, terms and conditions:

**Duration of Lease.**

1. Unless sooner terminated as elsewhere herein provided, this lease shall continue for a period of 30 days from and after the date of the delivery hereof, and so long thereafter as actual drilling on said premises is being diligently conducted or deferred under provisions herein elsewhere contained, and should production of one or more of the products specifically mentioned in the next succeeding paragraph result from said drilling operations, then this lease, unless sooner terminated as elsewhere herein provided, shall remain in full force so long thereafter as one or more of said products are produced from said demised premises in commercially paying quantities, not to exceed 25 years from date hereof.

**Purpose of Lease and Rights of Lessee.**

2. The Lessee shall have the sole and exclusive right, (unless otherwise expressly provided herein to the contrary), of prospecting the demised premises and drilling for, producing, [149] extracting, treating, removing and

marketing oil, gas, natural gasoline and other hydrocarbon substances therefrom, and to establish and maintain on said premises such tanks, boilers, houses, engines and other apparatus and equipment, power lines, pipe lines, roads and other appurtenances as may be necessary or convenient in the production, treatment, storage and/or transportation of any and all said products from and on said property. The Lessee shall have the right during the life of this lease to drill for and develop such water on any part of the demised premises as it may require in its operations hereunder, provided the Lessors possess the right so to do; provided, however, that it is understood by the Lessee that a portion of said demised premises is now being occupied by John Harvey, doing business under the firm name and style of De Luxe Water Taxi Co., under one or more leases, which said lease or leases, held by said John Harvey, the Lessors shall be under no obligation to terminate until such time as the Lessee has drilled and completed at least one well on said property which produces oil and/or gas in commercially paying quantities, and until such occupancy by the said John Harvey, his successors in interest or assigns, shall substantially interfere with the operations of the Lessee hereunder. It is further understood by the Lessee and the Lessors warrant that the portions of said premises so held by said John Harvey are by him held under a month to month lease or leases, which are subject to termination upon the notice provided by law therefor.



### Drilling Requirements.

3. The Lessee agrees to commence the actual drilling of a well on the demised premises within 30 days after date of the delivery hereof, and to diligently prosecute the same until oil and/or gas be found in commercially paying quantities, or to a depth at which further drilling would, in the opinion of a competent [150] and impartial geologist, be unprofitable; provided, however, that the Lessee shall drill said first well to and so far into the "terminal" sand, zone or horizon as may reasonably be expected to secure therefrom the most prolific production of oil. If said first well or any subsequent well prior to completion of a paying well be abandoned for mechanical or other reasons, this lease shall remain in force and effect if the actual drilling of a new well is begun within 30 days from the date of such abandonment, and the drilling thereof is diligently prosecuted to completion or abandonment. If prior to the completion of said first well there shall have been completed within 330 feet of the exterior boundary line of any of the demised premises a well which produces oil and/or gas in commercially paying quantities, then and in such event the Lessee agrees to promptly commence the drilling of a second well and to diligently prosecute the drilling thereof concurrently with the drilling of said first well, until such second well shall have been completed as a commercial producer or until it shall have been drilled to a depth at which further drilling would, in the opinion of a compe-

tent and impartial geologist, be unprofitable. If at the time of the abandonment of any well the Lessee is already engaged in the drilling of one or more other wells upon the demised premises, the foregoing requirement for the commencement of a new well within 30 days after the date of such abandonment shall not apply so long as the drilling of any such additional well or wells shall be in good faith diligently continued.

#### Subsequent Wells.

It is further understood and agreed that subject to any rules and regulations of any Federal, State, Municipal or other governmental agency or other matters or conditions beyond the control of the Lessee, one well shall be drilled to completion and production for each one acre of land covered hereby as follows: [151] Such wells, (unless the Lessee shall elect or be required hereunder to accelerate its drilling operations), shall be drilled in succession; the drilling of each successive well shall be commenced at an interval of not more than 30 days after the next preceding well has been completed and placed on production. Such drilling of said wells shall continue until a number equal to one well for each acre of land covered hereby has been drilled and completed as a commercial producer.

#### Full Development Clause.

Unless excused from so doing under Paragraph 5 hereof, (anything herein elsewhere to the contrary notwithstanding), the Lessee agrees, while operat-

ing hereunder, to properly produce all available oil, gas and other hydrocarbon substances from the demised premises, (or any portion thereof held by the Lessee), and to properly exploit, develop and protect the minerals and mineral rights in the demised premises, (or in any portion thereof held by the Lessee), subject, in each instance, to legal restrictions and to any regulations imposed by governmental authority or any other matters over which the Lessee has no control. For a failure of the Lessee, when reasonably necessary and proper so to do, to develop any known commercially profitable zone or stratum the Lessors may forfeit the right of the Lessee to develop or produce any such zone or stratum or any zone or stratum below any depth from which the Lessee may then be producing on said pemises, or the Lessors may pursue any other remedy given them by law hereunder.

### **No Slant Drilling.**

The Lessee also agrees to drill all wells within an area representing the superficial area of the demised premises from the surface thereof down to the depth of said wells, and not to trespass upon the lands of adjoining or neighboring owners, and to make the necessary surveys to carry out the provisions of this clause, which surveys shall be open to the inspection of the [152] Lessors and their authorized representatives; and the Lessee agrees to indemnify and protect the Lessors and each of them against any and all claims and refunds for all oil, gas and other hydrocarbon substances se-

cured and produced from any well drilled hereunder not extending down wholly beneath said superficial area.

#### Limitation on Rights to Deepen, etc.

4. The Lessee shall have the right at all times during the continuance of this lease to operate, deepen, (if the right to deepen has not been forfeited), redrill and maintain all producing oil and/or gas wells upon the demised premises; provided, however, that the Lessee shall not, without the written consent of the Lessors, have the right to deepen any existing well or to drill any new well after a forfeiture has occurred because of the failure of the Lessee to fulfill any of the drilling obligations hereunder, but this proviso shall apply only to property affected by such forfeiture and to the wells thereon situate or intended to be drilled thereon.

#### Suspension of Operations.

5. Drilling and/or producing and/or repairing operations may be delayed, suspended or curtailed on the demised premises only in the event that they are prevented by the elements, accidents, strikes, lockouts, delays in transportation or interference by Municipal, County, State or Federal action, or the action of other governmental officers or bodies or other causes beyond the reasonable control of the Lessee, or when there is no market for the oil; provided, however, that the failure of the Lessee to obtain any permit or permits legally required



as a condition precedent to the drilling of any such well or wells shall not operate to delay, suspend or curtail any such operation where the failure to obtain any such permit is the result of the neglect of the Lessee to in good faith promptly apply therefor, or where any refusal to grant such a permit is based upon any prior acts [153] or omissions of the Lessee; and, provided, further, that in no event shall any failure, from whatever source, to obtain any such necessary permit or permits extend the time for the commencement of the actual drilling of the first well beyond 120 days from the date hereof.

#### Conservation Agreements.

The Lessee, if and when legally required so to do, is hereby authorized to enter into conservation and curtailment agreements with other operators for the purpose of preventing waste or for the conservation of oil and/or gas; provided that any such legally required agreed curtailment, unless otherwise provided by law, shall be at no greater pro rata percentage per well or location on demised premises than that on offset acreage where offset wells are producing or drilling; provided, further, however, that no such legally required agreement, unless provision therefor be made mandatory by law, shall require or permit the Lessee to suspend or curtail any drilling or production operations on any well which offsets any well on adjacent premises drilled or being drilled within 330 feet of the boundary line of the demised premises, where the drilling



or production of the well so offset is not likewise being suspended or curtailed.

#### Free Use of Fuel and Water.

6. The Lessee shall be entitled to use, without payment of royalty, so much of the water, (if the right to develop and produce water be available to the Lessee hereunder), oil and/or gas developed and produced by the Lessee on the demised premises, as may be required by the Lessee in the operation of said premises.

#### Royalty on Oil.

7. The Lessee shall pay said Trustee in Bankruptcy, his successors or assigns, on or before the 20th day of each month, as royalty and rental, a sum equal to thirty-five per cent (35%) of the full market price on the demised premises of all oil produced and saved by it from said premises during the last preceding [154] calendar month, or (as hereinafter provided) in lieu thereof, thirty-five per cent (35%) of the oil so produced and saved. Said market price shall be the full market price contracted for by the Lessee and shall not be less than the available posted market price offered by the major oil purchasing companies for oil of like gravity and quality on the premises where produced in the district in which the demised premises are located on the date of delivery of the oil from the Lessee's gauge tanks, unless clean oil be unsaleable at such price, in which event the Lessee shall so notify Lessors of such condition, and pending the

continuance of such condition, the Lessee shall sell such clean oil at the best available price obtainable therefor, unless the Lessors elect to take in kind, and the price contracted therefor by the Lessee shall be the price used in settlement with the Lessors on account of the oil so marketed.

#### Dehydration.

In the event the oil requires treatment or dehydration to render it marketable as clean oil, the Lessee shall so treat or dehydrate the same or cause the same to be treated or dehydrated, and the Lessee is hereby authorized to deduct from the amount due the Lessors a sum equal to thirty-five per cent (35%) of the actual cost of transportation to or from the treating plant, if same be located off of the demised premises, and thirty-five per cent (35%) of the actual cost of such treating or dehydrating, exclusive of any plant or overhead cost, not to exceed four cents per barrel for such treating and/or dehydrating.

#### Royalty in Kind.

At Lessors' option, exercised not oftener than four times in any one calendar year, upon thirty days' previous written notice, Lessee shall, until notified in writing to the contrary, deliver into Lessors' tanks on the demised premises, free of cost, Lessors' royalty oil. No royalty shall be due the Lessors for [155] or on account of any oil lost through evaporation, leakage or otherwise, not due to the negligence of the Lessee, prior to the

marketing of the same or delivery to the Lessors, if royalty oil is being taken in kind.

#### Royalty on Gas.

8. The Lessee shall be under no obligation to sell or store gas or water, nor to manufacture gasoline or other products from natural gas; provided, however, that if the Lessee can contract the manufacture of gasoline and/or other products from natural gas on a commercially profitable basis, the Lessee will be required so to do, unless the Lessee elects to manufacture the same itself. If any gas or any water is sold, the Lessee shall pay to the said Trustee in Bankruptcy, his successors or assigns, a sum equal to thirty-five per cent (35%) of the proceeds of the sale of such gas or water, after deducting any actual cost (exclusive of overhead) of transporting and selling the same. If casinghead gasoline or other products be manufactured or extracted on the premises or elsewhere by the Lessee or by others under a contract or lease on a royalty basis from gas produced from any well or wells on the demised premises, such products shall be marketed according to the prevailing usage and custom of marketing such products and at the best price obtainable therefor consistent with sound business principles, and the Lessee shall deduct from the gross royalty or proceeds received by the Lessee from the sale of such products any actual cost (exclusive of overhead) to the Lessee of extracting, (if it extract such products), transporting and selling the same, and shall pay to the said Trustee

in Bankruptcy, his successors or assigns, a sum equal to thirty-five per cent (35%) of the remainder of such royalty or proceeds.

#### Taxes on Personalty.

9. The Lessee shall well and truly pay before delinquency all taxes and assessments levied or assessed against the [156] improvements, machinery, equipment or other property, real or personal, placed or caused to be placed by it upon the demised premises, including all oil stored thereon, exclusive of Lessors' royalty oil.

#### Other Taxes.

If the assessed value of the demised premises, (exclusive of the improvements thereon), be hereafter increased over the assessed valuation as fixed for the fiscal year 1936-37, by reason of the discovery of oil and/or gas thereon, the Lessee shall pay sixty-five per cent (65%) of all taxes levied or assessed upon such increase above the assessed valuation for said fiscal year 1936-37, and the Lessors shall pay the balance of the taxes and/or assessments on said lands; provided, however, that if under the present laws or any laws which may be hereafter enacted, this lease and/or the leasehold estate created hereby and/or the oil, gas, minerals or mineral rights in said premises are assessed separately and apart from said land, under any name or designation whatsoever, and/or if any tax be levied or assessed which is based upon the quantity of the production of oil and/or gas from said prem-

ises, whether assessed or levied to or against the Lessors or Lessee, or if any severance charge be levied, assessed or made, then sixty-five per cent (65%) of the charges and/or taxes so levied, assessed or made shall be paid by the Lessee and thirty-five per cent (35%) thereof shall be paid by the Lessors.

#### Failure of Lessors to Pay Taxes.

Upon the failure of the Lessors to pay their proportion of any of said taxes, the Lessee is hereby authorized to pay the same, and the Lessors agree to repay the Lessee the amount so paid, with interest thereon at the rate of 7% per annum from the date of such payment, by the Lessee until so repaid.

#### Rights if Lessee Pays Lessors' Taxes.

In case of any such payment by the Lessee it may deliver to the Lessors an itemized statement of all taxes so paid [157] for the Lessors, in which event said Lessee may deduct from the next royalty or royalties payable hereunder an amount sufficient to reimburse the Lessee for the amount so paid.

#### Rights if Lessors Pay Lessee's Taxes.

Upon the failure of the Lessee to pay its proportion of said taxes, the Lessors or any one or more of them may advance the same, and the Lessee agrees to repay same to the Lessor or Lessors so making said advancement, together with interest



thereon at the rate of 7% per annum from the date of such advancement until repaid.

The obligations of the Lessors under this Paragraph 9 shall not be binding upon any trustee lessor except to the extent that such trustee lessor may have in his possession monies sufficient to meet such obligations which may be available for that purpose, nor shall any such obligations be binding upon any such trustee lessor in his or its individual capacity.

#### Royalty, Where and How Paid.

10. All payments of rentals and royalties due hereunder shall be made by the Lessee's check, accompanied by a statement showing in detail how the amount was arrived at, mailed, postage prepaid, or delivered personally on or before the day such payment is due, to said Trustee in Bankruptcy at the address of such Trustee, at Los Angeles, California, until further notified by said Trustee in Bankruptcy. No change in the ownership of said demised premises or in any part thereof or in the rentals or royalties or any part thereof shall affect or bind the Lessee until the purchaser thereof shall exhibit to the Lessee the original instrument of conveyance and furnish to the Lessee a duly certified copy thereof. Such evidence of ownership must be supplied at least thirty days before the same is to take effect, (unless otherwise consented to by the Lessee), otherwise payment of rentals to

the purchaser's predecessor in title shall bind such purchaser. [158]

#### Paying Quantities.

11. The term "paying quantities" and similar expressions wherever used herein are hereby defined to mean such quantities of oil and/or gas as will justify the Lessee in continuing to operate the well or wells from which the same may be produced.

#### Manner of Operations and Records Thereof.

12. The Lessee shall carry on all operations hereunder diligently, with adequate equipment, and in a careful workmanlike manner, and in accordance with all valid laws, rules and regulations enacted by any authority having jurisdiction over such operations, and shall keep full and true records of the operations and productions, sales and shipments of products from said property and all other records necessary and proper to enable it to, (and it shall), fully and properly account hereunder, and all such records and the operations on said demised premises shall be at all reasonable times open to the inspection of the Lessors or any one or more of them, (including all information filed with the State Oil and Gas Supervisor by the Lessee, its successors or assigns, consent to the inspection of which is hereby expressly granted by the Lessee). Whenever requested by the Lessors or by any one or more of them in writing, the Lessee

shall furnish to them a copy of the log of any well drilled on said demised premises.

#### Basis of Accounting by Lessee.

All accountings by the Lessee to the Lessors for royalty and rental from oil produced hereunder shall be based upon tests made of the oil after it has been cleaned and dehydrated, and which tests must be some approved modern method commonly in use at the time the tests, respectively, are made, and which said tests and the manner of making the same must be such as to obtain the most accurate results reasonably obtainable, and it shall be the duty of the Lessee in marketing such oil to observe and enforce these requirements; and, in contracting for the [159] processing of natural gas, it shall be the duty of the Lessee to see that it gets a like or greater percentage of other products (or of the proceeds therefrom) extracted and saved from the natural gas as it does of the gasoline (or of the proceeds therefrom) extracted and saved from the natural gas.

#### Use of Premises by Lessors.

13. The Lessors and each of them shall have the right to gauge all production hereunder and to use the surface of the demised premises, (where they have the right now to use the same, respectively), for any purpose or purposes not inconsistent with the rights of the Lessee hereunder, and to such an extent as will not unreasonably interfere with such rights of the Lessee hereunder, including the right

to develop or to cause to be developed any sand or zone in the demised premises, the right to develop which has been lost by the Lessee. The Lessee agrees to conduct its operations hereunder so as to interfere as little with such use by the Lessors, respectively, as is consistent with the economical operation of the property for the development and production of oil, gas and other hydrocarbon substances therefrom and thereon.

#### Removal of Equipment.

14. The Lessee shall have, within the time elsewhere herein provided therefor, the right to remove any houses, tanks, pipe lines, structures, casing or other equipment, appurtenances or appliances of any kind brought by it upon the said demised premises, whether affixed to the soil or not; provided, however, that in case of the abandonment, for reasons other than mechanical difficulties, of any producing oil and/or gas or water well in which the Lessee has landed casing, if the owner or owners of the demised premises on which any such well shall be located shall desire to retain the same, he or they shall notify the Lessee in writing to that effect within ten days after receiving written notice from the Lessee of its intention to abandon and remove [160] casing, and thereupon the Lessee shall leave in the well such of said casing as any such owner or owners shall require, and such owner or owners shall forthwith pay to the Lessee fifty per cent. of the cost to the Lessee of such casing delivered on the ground.

**Forfeiture.**

15. In the event of any breach of any of the covenants, terms or conditions of this lease by the Lessee, other than one of those mentioned in Paragraph 29 hereof, and the failure of the Lessee to commence in good faith to remedy the same within 30 days after written notice from the owner or owners of the demised premises so to do, or if the Lessee shall fail to diligently prosecute its efforts until such default has been fully remedied, then, at the option of such owner or owners, this lease shall forthwith cease and determine, and all rights of the Lessee herein and hereunder shall be at an end; provided, however, that notwithstanding any such forfeiture of this lease for any cause other than one of those mentioned in subparagraphs (a) and (b) of Paragraph 29 hereof the Lessee shall have the right to retain any and all wells then being drilled or which may then be producing oil and/or gas in paying quantities, together with the afore-said easements and appurtenances of said wells, in so far as reasonably necessary for the operation thereof, and sufficient land surrounding each well for the operation thereof. The land so retained shall be subject to all of the terms and conditions of this lease.

**Litigation as to Royalty—Delinquent Liens.**

16. Should suit be brought involving the ownership of any royalties accruing hereunder or the validity of this lease or the foreclosure of a lien



or charge against the fee of any lot, piece or parcel of land included in the demised premises, or said rents and royalties, the Lessee shall not be relieved of the obligation to make any such payment of rents and royalties, but such payments shall be made to a bank to be selected by the Lessors, [161] their successors in interest or assigns; and as to the amount in controversy only, shall be held in escrow by such bank pending the determination of such suit, and shall upon the final determination thereof be paid over to the party or parties who shall be determined to be entitled thereto.

#### Rezoning and Permits.

17. That as to all or any part of the lands covered by and subject to the terms of this lease which may at the date hereof or which may hereafter require a permit or zoning to permit any authorized operation of the Lessee hereunder, the Lessors of the lands so requiring such permit or rezoning and the Lessee agree, but without expense to the Lessors, to sign and to cause to be delivered to the legally constituted authorities of the proper Municipal or other political subdivision the necessary petitions, documents, maps and/or other requisite papers requesting, soliciting and praying for such permit or the rezoning of such lands so as to permit such operations thereon; provided, however, that nothing herein contained shall obligate the Lessors or any one or more of them to sign any petition, document, map or other paper where the signing thereof would

have the effect of obligating such signer to pay any money or moneys or to perform any other act which might affect such signer financially, or which might operate as a transfer or relinquishment of any right or interest of such signer hereunder, or as a transfer or conveyance of any interest of such signer in said property or in any products therefrom.

#### Lessee Liable for Damages and Negligence.

18. The Lessee shall during the term of this lease be responsible to the Lessors, respectively, and to all other persons or corporations for all damages caused by its negligence and/or by its operations hereunder, and shall indemnify and defend the Lessors and each of them against any and all such damages or claim [162] therefor on the part of third persons; and, if the Lessee shall engage in any operation or operations hereunder which may have the effect of placing a legal liability upon the Lessors, the Lessee shall, at its own cost and expense, take out and maintain all insurance reasonably necessary to protect and indemnify the Lessors and each of them hereunder, and shall furnish to the Lessors appropriate evidence that the Lessee has complied with the requirement to take out and maintain such insurance.

#### Notices.

19. Any notice from the Lessors or any of them to the Lessee may be given by serving such notice personally upon the Lessee or by sending the same by registered mail addressed to the Lessee at 417

South Hill Street, Los Angeles, California, and any notice from the Lessee to the Lessors or to any one or more of them may be given by sending the same by registered mail addressed to said Lessors at their respective places of business in the City of Los Angeles, California. Any party hereto may at any time by written notice to the others change the address to which notices shall thereafter be sent by the person or persons desiring to send such notice.

Lessee to Keep Premises Free of Liens.

20. All materials furnished or work done on said demised premises by the Lessee shall be at the Lessee's sole cost and expense, and the Lessee agrees to protect said demised premises and each piece and parcel thereof and the respective Lessors from all claims of contractors, laborers and materialmen, hereby consenting that the Lessors may post and keep posted on the demised premises such notices as may be desired in order to protect said lands and premises against mechanics' or other liens resulting from the operations of the Lessee hereunder.

Surrender of Premises.

21. Upon the expiration of this lease or its sooner termination in whole or in part, the Lessee shall surrender the [163] possession of the demised premises or the affected portion thereof to the Lessors, and shall deliver or cause to be delivered to the Lessors a good and sufficient reconveyance thereof. Within 30 days after such expiration or termina-

tion, the Lessee shall, (subject to the rights and privileges granted the Lessee and the Lessors, respectively, hereunder), remove from such premises as to which this lease is so terminated, all of its rigs, machinery and other property, and shall fill all sump holes and other excavations made by it.

#### Right to Quitclaim.

At any time after the Lessee has drilled the first or any subsequent well upon said demised premises to the depth required by Paragraph 3 hereof, if such well or wells be incapable of producing in paying quantities, the Lessee may quitclaim the demised premises, or the parcel thereof upon which such well may have been drilled to the Lessors, and thereafter the obligations of the Lessee hereunder shall cease as to the premises or parcel so quitclaimed; provided further, however, that the quitclaiming of either of said parcels without the other shall have the same effect and be accompanied by the same results as if the same had been forfeited under Paragraph 15 hereof, but the quitclaiming of the entire premises, whether accomplished by one or two deeds and whether accomplished at the same or different times, shall operate to deprive the Lessee of all of its rights hereunder, except the right to remove its equipment as provided in Paragraph 14 hereof, subject to the rights of the owner or owners as in said last mentioned paragraph set forth.

#### Arbitration by Geologists.

The geologist mentioned in said Paragraph 3 hereof shall be a geologist mutually agreed upon in



writing by the parties hereto. If they cannot so agree the Lessors shall select one geologist, the Lessee another, and if the two so selected cannot agree, they are to select a third, whose opinion, when [164] expressed in writing, shall be binding on all parties hereto.

Assignment.

22. It is agreed by and between all of the parties hereto that the Lessee shall have no right to (and it covenants that it will not), without the written consent of the Lessors first had and obtained, assign or transfer this lease or any interest therein or thereunder, nor sublet the demised premises or any part thereof; provided, however, that nothing in this paragraph contained shall operate to deprive the Lessee of the absolute right to assign or transfer this lease in its entirety in the event (a) that the Lessee consolidates with another corporation, or (b) in the event it reorganizes, or (c) in the event it makes a bonafide transfer of a majority of its assets; but any such assignment or transfer must conform to the requirements hereinafter in this paragraph contained. It is hereby further agreed that in the event this Lease shall be assigned by the Lessee with the consent of the Lessors as to a part or as to parts of the demised premises, and the assignee or assignees of such part or parts shall default in the performance of any covenant of this lease as applied to such portion so assigned, such default shall not operate to defeat or affect this lease in so far



as it covers the part of the demised premises retained by the said Lessee or any assignee thereof upon which there is no default. Any transfer or assignment of this lease or of any interest herein or hereunder or of the leasehold estate or any part thereof or of any interest therein, or the subleasing of said demised premises or of any part thereof, or any agreement for the joint development or operation of said demised premises or any part thereof, whether made by the Lessee or by anyone who may have succeeded to all or some of the rights of the Lessee hereunder, shall operate at the option of the Lessors to entitle the Lessors to terminate this lease and to re-enter the premises, unless such assignment, trans- [165] fer, sublease or agreement is in writing and contains (1) the full and correct name and residence address of the assignee, transferee, sublessee or joint operator, and (2) a covenant on the part of such assignee, transferee, sublessee or joint operator to the effect that such assignee, transferee, sublessee or joint operator is bound by all rights granted by the Lessee to the Lessors herein and assumes for the benefit of the Lessors and will faithfully keep, observe and perform each and every covenant, term and condition in this lease contained on the part of the Lessee in the future to be observed, kept or performed, in so far as the same may apply or relate to any interest, property or estate acquired by said assignee, transferee, sublessee or joint operator under any such assignment, transfer, sublease or agreement; and unless said in-

strument or a duplicate thereof be subscribed by said assignee, transferee, sublessee or joint operator and be duly acknowledged by him and certified so as to entitle the same to recordation, and be delivered to said Lessors in person or by United States registered mail in the manner herein required for the service of any notice upon the Lessors, within ten days next following the delivery of any such assignment, transfer, sublease or agreement. Such name, address, assumption and covenant may at the option of the assignee, transferee, sublessee or joint operator be contained in a separate instrument to be executed concurrently with such assignment, transfer, sublease or agreement, acknowledged, certified and delivered to said Lessors within the time and in the manner above provided. If such assignment, transfer, sublease or agreement shall pertain to only a portion of the leasehold estate or of an interest therein, as hereinbefore provided, any right of forfeiture under this provision shall pertain only to such portion. [166]

#### Release of Lessee in Case of Assignment.

In the event of the making of any such assignment, transfer or sublease, as herein provided for, and the delivery to the Lessors of the instrument containing such information and covenant, together with a copy of any other instrument or instruments by or through which any such assignment, transfer or sublease may have been accomplished, if the Lessors shall have approved in writing of the making

of such assignment, transfer or sublease, the Lessee shall thereupon be released and relieved of any obligation hereunder thereafter maturing, in so far as the same may relate or apply to any interest, property or estate acquired by such assignee, transferee or sublessee under any such assignment, transfer or sublease.

#### Successors and Assigns.

23. This lease and all of its terms, conditions, covenants and stipulations, unless otherwise provided herein, shall extend to and be binding upon the successors and assigns of the Lessee and upon the successors in interest and assigns of the respective Lessors.

#### Use of Water Front Property.

24. Lessee covenants not to construct upon the surface of the demised premises within 150 feet of said Channel No. 3 any building, tanks or other structures, and agrees not to occupy the surface of said premises within 150 feet of said Channel No. 3 for any purpose, and that it will at all times keep open and unobstructed on each of said parcels a right of way not less than twenty-four feet in width extending from the nearest public street to said 150 foot strip lying along said Channel No. 3, which said rights of way shall be at all times available to the said Lessors and to their respective licensees, successors in interest and assigns, for ingress to and egress from said respective strips of land; provided,

however, that the Lessee shall not be required to surface, pave or repair said rights of way, (unless such repair [167] be necessitated by its acts), nor shall it be liable for any injury which may result to any person while passing or attempting to pass over either of said rights of way and which may have been proximately caused by any defect in or disrepair of such right of way which it was not obligated to remedy or repair as aforesaid.

#### Bonus.

25. In consideration of the rights in this lease, granted to the Lessee, the Lessee agrees to pay to the Lessors (in addition to any cash bonus paid for this lease), a bonus of \$25,000.00, in addition to all royalties hereinabove provided for, payable out of ten per cent (10%) of the gross production first obtained from the demised premises.

#### Covenants Run With Land.

26. All covenants herein contained pertaining to the payment of rents and royalties shall be deemed to be covenants running with the land and shall be binding upon and shall inure to the benefit of the owner or owners of such lands until all of the rights of the Lessee hereunder are finally terminated.

#### Lessors Acquire No Additional Interest.

27. Anything elsewhere herein contained to the contrary notwithstanding, it is expressly understood and agreed by and between the Lessors, (and so understood by the Lessee), that nothing herein con-



tained shall operate to convey or transfer to any Lessor any greater right or interest in the demised premises than he or it may have had prior to the execution hereof; neither is it the intention of any Lessor herein to assume or become liable for the performance or the lack of performance of any duty or obligation of any other Lessor hereunder.

#### Change of Address.

28. The Lessee covenants and agrees that it will, in the event it changes its place of business or mailing address, promptly notify the Lessors thereof in writing. The Lessors covenant and agree that in the event they change their respective places of business or mailing addresses at any time while interested hereunder they will give like notice thereof to the Lessee. [168]

#### Forfeiture for Failure to Drill or Pay Royalty.

29. (a) If the actual drilling of the first well herein provided for has not been commenced within the time herein first provided for the commencement thereof, (unless excused from so doing under Paragraph 5 hereof), this lease shall, at the option of the Lessors, automatically cease and terminate, unless prior to such default the time for the commencement of the drilling of such well shall have been extended by the written consent of the Lessors herein. No such extension shall be granted without the payment in advance by the Lessee of an additional sum of money to be mutually agreed upon



and paid at the time of the granting of any such extension, nor shall anything in this paragraph contained be construed as giving to the Lessee any right to demand or receive any such extension.

(b) The failure to pay any rental or royalty payable by the Lessee hereunder within the time herein provided therefor and for 10 days after receipt of written notice of such default given by the Lessors herein shall operate, at the option of the Lessors, to forthwith terminate all of the rights of the Lessee hereunder in and to the demised premises or the portion thereof as to which such default may exist, unless such payment has been excused or prevented by operation of law or by the courts in the enforcement thereof.

Time of Essence.

(c) The Lessee, notwithstanding anything in Paragraph 15 hereof contained, shall not have any time within which to cure any default in the payment of any rental or royalty payable hereunder except as in this Paragraph 29 provided for; nor shall the Lessee have more than 10 days after receipt of notice of default from the Lessors within which to cure any substantial default in the prosecution of the drilling of said first or any subsequent well or in the operation of any well unless excused [169] from so doing under Paragraph 5 hereof, and the Lessors may, (subject to the exceptions hereinafter in this subparagraph contained), forfeit said lease and all of the rights of the Lessee thereunder for any failure on the part of the Lessee to remedy

within the time in this subparagraph permitted any such default in the drilling or operation of any well; provided, however, that any such forfeiture which may result from any default in drilling or operation of any such well or wells shall not operate to deprive the Lessee of the right to retain and operate any existing well or wells as to which no such default may have occurred, and any such existing well or wells so retained and the land surrounding the same which may be reasonably required in the operation thereof shall remain subject to all of the terms and conditions of this lease, but otherwise such forfeiture shall apply to the entire premises, unless the default resulting in such forfeiture shall have occurred on only one of said parcels, in which event it shall apply only to such parcel.

#### Remedies Cumulative.

30. Any remedies herein provided for shall be deemed to be cumulative with any other remedy or remedies provided by law.

#### No Provision for Fees or Compensation.

31. No provision of this indenture is made or entered into directly or indirectly for the purpose of fixing the amount of the fees or other compensation to be paid to any party in interest or any attorney for any party in interest in the bankruptcy proceeding of F. P. Newport Corporation, Ltd., a corporation, bankrupt, for services rendered in connection therewith or otherwise, and the fixing and determination of any fees or compensation to be paid to anyone whomsoever from the assets of said bank-

rupt estate is, in accordance with the law, left entirely to the determination of the Court having jurisdiction of said bankruptcy proceeding unaffected by any provision, term or condition, expressed or implied, of this indenture. [170]

Execution Hereof Subject to Approval of Court.

32. This lease is subject to the approval of the District Court of the United States, Southern District of California, Central Division, and it shall not become or be binding upon any one or more of the parties hereto unless and until an order shall have been made and entered by said court in the Matter of the Estate of F. P. Newport Corporation, Ltd., a corporation, Bankrupt, No. 25308-M, now pending in said court, authorizing, approving and confirming the execution hereof by the said Trustee in Bankruptcy of said bankrupt estate.

In Witness Whereof, each of the Lessors has hereunto subscribed its or his (as the case may be) name, and the Lessee has hereunto caused its corporate name to be subscribed, and its corporate seal affixed, by its officers thereunto first duly authorized, the day and year first above written.

O. K. W. C. S.

[Seal]

SECURITY-FIRST NATIONAL  
BANK OF LOS ANGELES

By J. E. HATCH

Vice President

By R. T. ADAMS

Asst. Secretary

[Seal] F. P. NEWPORT CORPORATION, LTD.

By F. P. NEWPORT  
President

By J. B. GRIBBLE  
Secretary

By H. F. METCALF  
As Trustee in Bankruptcy of  
F. P. Newport Corporation,  
Ltd., Bankrupt.

Lessors.

[Seal] UNIVERSAL CONSOLIDATED  
OIL COMPANY

By E. G. STARR  
President

By R. D. MILLER  
Secretary

Lessee. [171]

State of California,  
County of Los Angeles—ss.

On this 14th day of January, 1938, before me, Marian Adams, a Notary Public in and for the County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared J. E. Hatch, known to me to be the Vice President, and R. T. Adams, known to me to be the Assistant Secretary, of Security-First National Bank of Los Angeles, the national banking association that executed the within instrument, known to me to be the persons who executed the within instru-



ment on behalf of said national banking association, and acknowledged to me that such national banking association executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal in said county, the day and year in this certificate first above written.

[Seal]

MARIAN ADAMS

Notary Public in and for the County of Los Angeles, State of California.

My commission expires May 16, 1940.

State of California,  
County of Los Angeles—ss.

On this 14th day of January, 1938, before me, Florence C. Grant, a Notary Public in and for the County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared F. P. Newport, known to me to be the President, and J. B. Gribble, known to me to be the Secretary, of F. P. Newport Corporation, Ltd., the corporation that executed the within instrument, known to me to be the persons who executed the within instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal in said county, the day and year in this certificate first above written.

[Seal]

FLORENCE C. GRANT

Notary Public in and for the County of Los Angeles, State of California. [172]



State of California,  
County of Los Angeles—ss.

On this 14th day of January, 1938, before me, Florence C. Grant, a Notary Public in and for the County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared H. F. Metcalf, known to me to be the person whose name is subscribed to the within instrument as Trustee in Bankruptcy of F. P. Newport Corporation, Ltd., Bankrupt, and acknowledged to me that he executed the same as such Trustee.

In Witness Whereof, I have hereunto set my hand and affixed my official seal in said county, the day and year in this certificate first above written.

[Seal]

FLORENCE C. GRANT

Notary Public in and for the County of Los Angeles, State of California.

State of California,  
County of Los Angeles—ss.

On this 14 day of January, 1938, before me, June Eddy, a Notary Public in and for the County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared E. G. Starr known to me to be the President, and R. D. Miller known to me to be the Secretary, of Universal Consolidated Oil Company, the corporation that executed the within instrument, known to me to be the persons who executed the within instrument on behalf of the said corporation, and

acknowledged to me that such corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal in said county, the day and year in this certificate first above written.

[Seal]

JUNE EDDY

Notary Public in and for the County of Los Angeles, State of California.

My commission expires March 1, 1941. [173]

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EXHIBIT "B"

ESCROW AGREEMENT AND  
INSTRUCTIONS.

To Title Guarantee and Trust Company,  
Los Angeles, California

Gentlemen:

1. The Lessors hereinafter named are handing you herewith an original and duplicate oil and gas lease dated the ..... day of January, 1938, made and entered into by and between Security-First National Bank of Los Angeles, a national banking association, as Trustee under its Trust No. D-7224, F. P. Newport Corporation, Ltd., a corporation, Bankrupt, and the Trustee in Bankruptcy of said F. P. Newport Corporation, Ltd., Bankrupt, as Lessors therein, and Universal Consolidated Oil Company, a California corporation, as Lessee therein, which said lease and the duplicate thereof

have been duly executed by all of the parties thereto, subject to approval and confirmation by the District Court of the United States, Southern District of California, Central Division, in the matter of the Estate of F. P. Newport Corporation, Ltd., a corporation, Bankrupt, No. 25308-M in the files and records of said Court.

2. Said Lessors will hand to you, if and when it can be obtained, a certified copy of an order made and entered by said Court in said bankruptcy proceeding, approving and confirming the execution of said lease by said trustee in bankruptcy of said bankrupt estate.

3. The said Lessee hands you concurrently herewith the sum of \$25,000.00.

4. Upon receipt by you within thirty (30) days from date hereof of said certified copy of said order you are required to promptly deliver to said Lessee said lease and to said trustee in bankruptcy said sum of \$25,000.00, together with the duplicate of said lease.

5. The said Lessee agrees to pay your escrow charges and for any certificate of title or policy of leasehold insurance which it may see fit to order from you, but delivery of said lease and money shall in no wise be conditioned upon the furnishing of any such certificate or policy or upon the contents thereof.

6. If you are not able to make delivery of said lease, the duplicate thereof and said money in accordance with the foregoing instructions within

thirty (30) days from date hereof you will upon the demand of the said trustee in bankruptcy for the return to him of said lease and duplicate thereof, or upon the demand of said Lessee for the return to it of said money, redeliver to said trustee in bankruptcy said lease and duplicate thereof (after first removing from said lease and the duplicate thereof the signature of the said Lessee and the respective certificates of acknowledgment thereof), and redeliver to said Lessee said money together with its said signatures and the said certificates of acknowledgment thereof; provided, however, that if no such demand be made upon you, you are authorized to make the de- [174] liveries in these instructions first provided for even though said thirty day period may have elapsed prior to the date of such deliveries.

7. The respective parties hereto agree to execute such further and additional instructions, not inconsistent herewith, as are usually and customarily required by you in such matters.

Dated the 14th day of January, 1938.

SECURITY-FIRST NATIONAL  
BANK OF LOS ANGELES,

as Trustee,

By J. E. HATCH

President.

By R. T. ADAMS

Secretary.

**F. P. NEWPORT CORPORATION, LTD.**

By **F. P. NEWPORT**

President.

By **J. B. GRIBBLE**

Secretary.

**H. F. METCALF**

as Trustee in Bankruptcy of  
the Estate of F. P. Newport  
Corporation, Ltd., Bankrupt.

**UNIVERSAL CONSOLIDATED  
OIL COMPANY**

By **E. G. STARR**

President.

By **H. D. MILLER**

Secretary.

[Endorsed]: Filed Jan. 14, 1938. Ernest R.  
Utley, Referee. Filed Nov. 28, 1941. R. S. Zimmer-  
man, Clerk. [175]



In the District Court of the United States  
Southern District of California  
Central Division

In Bankruptcy No. 25308-M.

In the Matter of F. P. NEWPORT CORPORA-  
TION, LTD., a corporation,  
Bankrupt.

ORDER APPROVING AND AFFIRMING  
REFEREE'S ORDER.

Be It Remembered:

That heretofore and on the 15th day of December, 1941, at the hour of 10:00 o'clock A. M., there came on regularly before this Court the motion of H. F. Metcalf, as Trustee in Bankruptcy of F. P. Newport Corporation, Ltd., a corporation, Bankrupt, for an order affirming the order heretofore made and signed by the Honorable Ernest R. Utley, Referee in Bankruptcy, on the 12th day of November, 1941, sustaining the objections of the Trustee to the claim of the Collector of Internal Revenue for \$19,363.65, and disallowing said claim, Messrs. Bailie, Turner & Lake appearing as counsel for said Trustee in Bankruptcy, and Wm. Fleet Palmer, United States Attorney, E. H. Mitchell, Assistant United States Attorney, and Eugene Harpole, Special Attorney, Bureau of Internal Revenue, appearing by Eugene Harpole, Esq., as counsel for the United States of America and Nat Rogan, as United States Collector of Internal Revenue for the

Sixth Collection District of California; and this Court having considered the Referee's Certificate on Review, the Findings of Fact, [176] Conclusions of Law, and Order of the Referee, and the documents referred to in the Referee's Certificate on Review, all of which were transmitted to and filed with this Court by the Referee; and the Court having considered the argument of counsel and being fully advised in the premises, concludes that said order of the Referee so transferred to this Court for review should be affirmed;

Now, Therefore, It Is Ordered, Adjudged and Decreed by the Court:

1. That the Findings of Fact and Conclusions of Law of the Referee in Bankruptcy, dated the 12th day of November, 1941, be and they are hereby approved and affirmed, and adopted by this Court as its Findings of Fact and Conclusions of Law.

2. That the Order of the Referee dated the 12th day of November, 1941, sustaining the objections of the Trustee in Bankruptcy to the claim filed by the Collector of Internal Revenue for \$19,363.65 and disallowing said claim be and it is hereby approved and affirmed.

Dated this 17th day of December, 1941.

PAUL J. McCORMICK

United States District Judge.

Approved as to form pursuant to Rule 44:

WM. FLEET PALMER

United States Attorney

E. H. MITCHELL

Assistant United States Attorney

EUGENE HARPOLE

Special Attorney

Bureau of Internal Revenue

By EUGENE HARPOLE

Attorneys for United States of America  
and Nat Rogan, Collector of Internal  
Revenue

[Endorsed]: Filed Dec. 17, 1941. R. S. Zimmerman, Clerk. [177]

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[Title of District Court and Cause.]

#### NOTICE OF APPEAL

Notice Is Hereby Given that the United States of America, a claimant in the above entitled bankruptcy proceeding, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the Order of the United States District Court for the Southern District of California confirming and approving the Order of Ernest R. Utley, Referee in Bankruptcy, of November 12, 1941, disallowing in full the claim theretofore filed in the above entitled proceeding on behalf of the United States of America for income and excess profits taxes alleged to be due from the bankrupt estate for the taxable years 1938 and 1939, made and entered in this action

through the Honorable Paul J. McCormick, Judge of the above entitled Court, on the 17th day of December, 1941.

Dated: This 12th day of January, 1941.

WM. FLEET PALMER,

United States Attorney,

E. H. MITCHELL,

Asst. U. S. Attorney,

EUGENE HARPOLE,

Special Attorney, Bureau of  
Internal Revenue.

By EUGENE HARPOLE,

Attorneys for United States  
of America.

Mailed 1/13/42 copy of Notice of Appeal to  
Bailie, Turner & Lake, Esqs. E. L. S.

[Endorsed]: Filed Jan. 13, 1942. [179]

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[Title of District Court and Cause.]

ORDER EXTENDING TIME TO DOCKET  
CAUSE ON APPEAL.

It Is Hereby Stipulated and Agreed by and between the attorneys for the Claimant and the Trustee that, subject to the approval of the Court, the time within which to file the record and docket the above entitled cause in the United States Circuit Court of Appeals for the Ninth Circuit be and the

same is hereby extended to and including the 12th day of April, 1942.

Dated: This 19th day of February, 1942.

WM. FLEET PALMER,  
United States Attorney,  
E. H. MITCHELL,  
Asst. U. S. Attorney,  
EUGENE HARPOLE,  
Special Attorney, Bureau of  
Internal Revenue.

By EUGENE HARPOLE,  
Attorneys for Claimant.

BAILIE, TURNER & LAKE,  
By NORMAN A. BAILIE,  
Attorneys for Trustee.

It Is So Ordered this 20th day of February,  
1942.

PAUL J. McCORMICK,  
United States District Judge.

[Endorsed]: Filed Feb. 20, 1942. [181]

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[Title of District Court and Cause.]

ORDER EXTENDING TIME TO DOCKET  
CAUSE ON APPEAL AND FOR PREPA-  
RATION OF RECORD ON APPEAL

Good cause appearing therefor, It Is Hereby  
Ordered that the time within which to file the record  
and docket the above entitled cause in the United



States Circuit Court of Appeals for the Ninth Circuit be, and the same hereby, is extended to and including May 12, 1942.

Dated: This 8th day of April, 1942.

ALBERT LEE STEPHENS

Judge of the United States  
Circuit Court of Appeals

[Endorsed]: Filed Apr. 8, 1942. [182]

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[Title of District Court and Cause.]

CLAIMANT-APPELLANT'S DESIGNATION  
OF CONTENTS OF RECORD ON APPEAL

To the Clerk of the District Court of the United  
States for the Southern District of California,  
Central Division:

You are hereby requested to include in the record  
on appeal herein—

1. Petition in Bankruptcy;
2. Order of Adjudication;
3. Order Appointing Trustee;
4. Claim filed by Collector of Internal Revenue  
for Deficiencies in 1938 and 1939 Federal income  
taxes on July 22, 1940;
5. Trustee's Objection to the Allowance of the  
Claim for 1938 and 1939 Federal income taxes filed  
September 28, 1940;
6. The Referee's Order of March 17, 1941, Dis-  
allowing the Claim of the Collector of Internal Rev-  
enue; [183]

7. Motion and Order extending time within which to file an Application for Review of the Referee's Order of March 17, 1941;

8. Petition for Review of Referee's Order of March 17, 1941;

9. Referee's Certificate on Review dated June 27, 1941;

10. Order of District Court dated October 23, 1941, returning records to Referee for making of Findings of Fact and Conclusions of Law;

11. Referee's Findings of Fact, Conclusions of Law and Order Disallowing Claim of Collector of Internal Revenue (Order dated November 12, 1941);

12. Petition for Review dated November 18, 1941;

13. Referee's Certificate on Review dated November 28, 1941;

14. Stipulation of Facts;

15. Trustee's First Report dated March 29, 1938;

16. Trustee's Second Report dated December 8, 1938;

17. Trustee's Second Supplemental Report dated December 22, 1938;

18. Trustee's Third Report dated October 31, 1939;

19. Petition for Authorization, Approval and Confirmation of an Oil and Gas Lease and for Order to Show Cause filed with the Referee on January 14, 1938;

20. Order of District Court dated December 17, 1941 (the Order appealed from) approving and affirming Referee's Order disallowing the claim filed for 1938 and 1939 Federal income taxes;

21. Notice of Appeal;

22. All Orders extending time to docket cause on appeal;

23. This Designation of Record on Appeal;

24. Designation of Points to be Relied upon on appeal;

25. Clerk's Certificate. [184]

This transcript is to be prepared as required by law and the rules of this Court and the rules of the United States Circuit Court of Appeals for the Ninth Circuit, and is to be filed in the office of the Clerk of said Circuit Court of Appeals at San Francisco, California.

Dated: This 17th day of April, 1942.

WM. FLEET PALMER,

United States Attorney,

E. H. MITCHELL,

Asst. U. S. Attorney,

EUGENE HARPOLE,

Special Attorney, Bureau of  
Internal Revenue.

By EUGENE HARPOLE,

Attorneys for Claimant-  
Appellant.

Received copy of the within Claimant-Appellant's Designation of Contents of Record on Appeal this 17 day of April, 1942.

BAILIE, TURNER & LAKE,  
Attorneys for H. F. Metcalf,  
as trustee in Bankruptcy.

[Endorsed]: Filed Apr. 17, 1942. [185]

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[Title of District Court and Cause.]

APPELLANT'S STATEMENT OF POINTS TO  
BE URGED UPON APPEAL.

1. That the District Court and the Referee in Bankruptcy erred in disallowing the claim filed on July 22, 1940, by Nat Rogan as Collector of Internal Revenue for the Sixth Collection District of California on behalf of the United States of America for Federal income taxes for the taxable years 1938 and 1939 in the sum of \$19,363.65 for the reason that said taxes were lawfully due to the United States upon the net income realized by the bankrupt estate from the operation of its property or business during said years.

2. That the District Court and the Referee in Bankruptcy erred in failing and refusing to hold that the Trustee in Bankruptcy was, during the taxable years 1938 and 1939, operating the property [186] or business of F. P. Newport Corporation, Ltd., the bankrupt, within the meaning of Section 52(a) of the Revenue Act of 1939 and the Internal Revenue Code and Section 19.52-2 of Treasury Regulations 103.

3. That the District Court and the Referee in Bankruptcy erred in holding that the net income of \$87,066.42 and \$30,288.99 determined by the Commissioner of Internal Revenue to have been received by said bankrupt's estate and its trustee in bankruptcy during the calendar years 1938 and 1939, respectively, was not subject to Federal income taxes within the meaning of Section 52(a) of the Revenue Act of 1938 and of the Internal Revenue Code.

4. That the District Court and the Referee in Bankruptcy erred in failing to allow the claim filed July 22, 1940, on behalf of the United States of America for 1938 and 1939 income taxes in the sum of \$19,363.65.

Dated: This 17th day of April, 1942.

WM. FLEET PALMER,

United States Attorney,

E. H. MITCHELL,

Asst. U. S. Attorney,

EUGENE HARPOLE,

Special Attorney, Bureau of  
Internal Revenue.

By EUGENE HARPOLE,

Attorneys for Appellant.

Received copy of the within Appellant's Statement of Points to Be Urged Upon Appeal.

BAILIE, TURNER & LAKE,

Attorneys for H. F. Metcalf,  
as Trustee in Bankruptcy.

[Endorsed]: Filed Apr. 17, 1942. [187]



[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, R. S. Zimmerman, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages, numbered 1 to 187, inclusive, contain full, true and correct copies of: Creditors' Involuntary Petition in Bankruptcy; Adjudication and Order of Reference; Order Appointing H. F. Metcalf, Trustee, etc.; Claim of Collector of Internal Revenue; Objections to Claim of Collector of Internal Revenue; Order Disallowing Claim of Collector of Internal Revenue; Motion for Extension of Time to File Petition for Review and Order thereon Granting; Petition for Review of Referee's Order, filed April 22, 1941; Referee's Certificate on Review, filed June 27, 1941; Order Remanding Record on Review to Referee; Findings of Fact, Conclusions of Law, and Order Disallowing Claim of Collector of Internal Revenue; Petition for Review of Referee's Order, filed November 22, 1941; Referee's Certificate on Review, filed November 28, 1941; Stipulation of Facts; First Report & Account Current of Trustee; Second Report & Account Current of Trustee; Supplement to Second Report and Account Current of Trustee; Third Report & Account Current of Trustee; Petition of Trustee for Confirmation of Oil & Gas Lease; Order Affirming Referee's Order; Notice of Appeal; Orders Extending Time to File Record and Docket Cause on Appeal (two); Desig-

nation of Contents of Record on Appeal; Statement of Points Upon Which Appellant Intends to Rely on Appeal which constitute the record on appeal to the Circuit Court of Appeals for the Ninth Circuit.

Witness my hand and the seal of said District Court, this 6th day of May, A. D. 1942.

[Seal]

R. S. ZIMMERMAN,

Clerk.

By EDMUND L. SMITH,

Deputy Clerk.

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[Endorsed]: No. 10130. United States Circuit Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. H. F. Metcalf, as Trustee in Bankruptcy of the Estate of F. P. Newport Corporation, Ltd., a corporation, Bankrupt, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed, May 7, 1942.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

In the United States Circuit Court of Appeals  
for the Ninth Circuit

No. 10130

In the Matter of F. P. NEWPORT CORPORATION,  
LTD., a corporation,  
Bankrupt.

APPELLANT'S STATEMENT OF POINTS TO  
BE URGED UPON APPEAL.

1. That the District Court and the Referee in Bankruptcy erred in disallowing the claim filed on July 22, 1940, by Nat Rogan as Collector of Internal Revenue for the Sixth Collection District of California on behalf of the United States of America for Federal income taxes for the taxable years 1938 and 1939 in the sum of \$19,363.65 for the reason that said taxes were lawfully due to the United States upon the net income realized by the bankrupt estate from the operation of its property or business during said years.

2. That the District Court and the Referee in Bankruptcy erred in failing and refusing to hold that the Trustee in Bankruptcy was, during the taxable years 1938 and 1939, operating the property or business of F. P. Newport Corporation, Ltd., the bankrupt, within the meaning of Section 52(a) of the Revenue Act of 1939 and the Internal Revenue Code and Section 19.52-2 of Treasury Regulations 103.

3. That the District Court and the Referee in Bankruptcy erred in holding that the net income

of \$87,066.42 and \$30,288.99 determined by the Commissioner of Internal Revenue to have been received by said bankrupt's estate and its trustee in bankruptcy during the calendar years 1938 and 1939, respectively, was not subject to Federal income taxes within the meaning of Section 52(a) of the Revenue Act of 1938 and of the Internal Revenue Code.

4. That the District Court and the Referee in Bankruptcy erred in failing to allow the claim filed July 22, 1940, on behalf of the United States of America for 1938 and 1939 income taxes in the sum of \$19,363.65.

Dated: This 17th day of April, 1942.

WM. FLEET PALMER,  
United States Attorney,  
E. H. MITCHELL,  
Asst. U. S. Attorney,  
EUGENE HARPOLE,  
Special Attorney, Bureau of  
Internal Revenue.

By .....  
Attorneys for Appellant.

Received copy of the within Appellant's Statement of Points to Be Urged Upon Appeal this 17 day of April, 1942.

BAILIE, TURNER & LAKE,  
Attorneys for H. F. Metcalf  
as Trustee in Bankruptcy.

[Endorsed]: Filed May 7, 1942. Paul P. O'Brien,  
Clerk.

